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No. 87-206

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

TRUSTEES FOR ALASKA, et al.,

Cross-Petitioner

v.

STATE OF ALASKA,

Cross-Respondent

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

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CROSS PETITION FOR CERTIORARI

QUESTION PRESENTED

1. Do the mineral leasing requirements of section 6(i) of the Alaska Statehood Act apply to all state mineral lands, or only to lands "whose mineral character was known at the time of [state] selection," when section 6(i) states that "[a]ll grants made or confirmed under this Act shall include mineral deposits," when the leasing restrictions in section 6(i) expressly apply to the "grants of mineral lands to the State of Alaska . . . ," and when the purpose of the leasing requirement was to generate revenue for the new state?

PARTIES INVOLVED

Cross-Petitioners Trustees for Alaska, Nunam Kitlutsisti, Dinyea Corporation, Village of Minto, Alaska Independent Fishermen's Marketing Association, Alaska Center for the Environment, Southeast Alaska Conservation Council, and Friends of the Earth (hereinafter Trustees for Alaska et al.), are a coalition of environmental, Alaska Native, and fishing organizations. Cross-petitioners were plaintiffs in the trial court, and appellants before the Alaska Supreme Court.

Cross-Respondent State of Alaska was the defendant in the trial court, and appellee in the Alaska Supreme Court.

Cross-Respondents Alaska Miners Association, Fairbanks North Star Borough, and Joseph E. Vogler were defendant-intervenors in the trial court,

and appellees in the Alaska Supreme Court.

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CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

Respondents Trustees for Alaska, et al., hereby cross-petition for a writ of certiorari to the Alaska Supreme Court.[1] Cross-Petitioners request this Court to grant a writ of certiorari on the issue of whether the payment of rent and royalties for the extraction of hardrock minerals in Alaska applies to all lands selected by the State under Sections 6(a) and (b) of the Alaska Statehood Act, or merely to lands that were known to be of mineral character at the time the state selected them.

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[1] The Clerk of this Court granted Respondents an extension of time until October 15, 1987 to file their response to the Petitions for Writs of Certiorari filed by the State of Alaska and the Alaska Miners Association.

OPINIONS BELOW

The opinion of the Alaska Supreme Court has not, as of the time of preparation of this Cross-Petition, been reported in West's Pacific Reporter. The slip opinion is reprinted in Appendix A. The decision of the Alaska Superior Court is reprinted in Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3). This Cross-Petition is filed pursuant to U.S. Supreme Court Rule 19.5. The opinion of the Alaska Supreme Court was issued on May 1, 1987. Petitions for Writs of Certiorari were filed by the State of Alaska and the Alaska Miners Association, and were received by Respondents Trustees for Alaska, et al., on August 3, 1987, and July 31, 1987, respectively.

STATUTE INVOLVED

Section 6(i) of the Alaska Statehood Act, Pub. L. 85-508, 72 Stat. 339, 342 (1958) provides:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine and remove the same. Mineral rights in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceeding instituted by the Attorney General for that purposes in the United States District Court for the District of Alaska.

STATEMENT OF THE CASE

The Alaska Statehood Act, note preceding 48 U.S.C. sec. 21, sets forth the terms and conditions under which Alaska was admitted as a state into the United States.

Section 6 of the Statehood Act gave Alaska the right to select 103,350,000 acres of land from the United States to pass into state ownership. However, these land grants were not unqualified. Rather, section 6 sets forth a number of requirements that govern the use and disposition of lands after conveyance to the new state.

The litigation below involved the proper interpretation of one such restriction, contained in section 6(i) of the Statehood Act (quoted above). Section 6(i) governs the manner in which the state is allowed to dispose of

"mineral lands" for the use and benefit of the citizens of Alaska. In particular, section 6(i) requires that state minerals be subject to "lease", as opposed to the federal system of mineral location. As explained below, this requirement was included to ensure that Alaska had a sufficient fiscal base to support the new state.

Mineral leasing in Alaska is governed by Title 38, Chapter 5 of the Alaska Statutes. For certain types of minerals, such as coal, phosphates, oil shale, oil and gas, sodium, sulfur, potassium, and geothermal resources, this statute requires the payment of rents and royalties to the state, providing the source of revenue anticipated by section 6(i). See AS 38.05.135 - 38.05.184. In sharp contrast, however, no rents and royalties are required for "hardrock"

minerals such as gold, silver, copper, molybdenum, lead, zinc, platinum, tin, and tungsten. AS 38.05.185 - 38.05.275.

Plaintiffs challenged the state's failure to charge rents and royalties for the extraction of hardrock minerals from state lands on the basis that this practice was, inter alia, in violation of section 6(i) of the Statehood Act. The Alaska Superior Court rejected this challenge for two reasons. First, the Court agreed with the defendants that the final proviso in section 6(i) constituted the exclusive means by which Alaska's compliance with section 6(i) could be challenged, and that plaintiffs lacked standing under Alaska law to bring this action. Appendix B at B-2 - B-4. Second, the Superior Court ruled in favor of the defendants on the merits. Id. at B-4.

Plaintiffs appealed this decision to the Alaska Supreme Court, which found that the leasing requirement set forth in the third sentence of section 6(i) required the State to lease all of its "mineral lands." More importantly, it held that the lease must include provisions requiring the miner to pay the State rent and royalties for the production of minerals from State "mineral lands." Appendix A at A-19-A-26. In reaching this decision, the Alaska Supreme Court agreed with the plaintiffs that the primary purpose of the section 6(i) leasing requirement was to ensure an adequate revenue base for the State of Alaska. Id. This holding is the primary subject of the petitions for certiorari filed by the State and the

Alaska Miners Association.[2]

The Court also held, however, that the phrase "mineral lands" was limited to those lands known to be mineral in character at the time they were selected by the State, thus substantially limiting the import of section 6(i)'s leasing requirement as a revenue-generating measure.

No final judgment has been issued in this case. Rather, the Alaska Supreme Court remanded the case to the Alaska Superior Court to fashion appropriate relief based on the opinion of the Alaska

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[2] The Alaska Supreme Court also found that, as a matter of state law, plaintiffs had standing to bring this challenge, and that the proviso in section 6(i) did not create an exclusive cause of action to challenge the state's implementation of section 6(i). Id. at A-4 - A-12. These issues were also raised in the Petitions for Certiorari filed by the State and the Alaska Miners Association.

Supreme Court.[3]

ARGUMENT

The Alaska Supreme Court's definition of "mineral lands" is wholly inconsistent with the language and legislative history of section 6(i), and in fact, with the revenue-generation rationale upon which the Court based its ruling on the meaning of the leasing requirement itself. Moreover, if this Court believes that the proper interpretation and implementation of section 6(i) is sufficiently important for a writ of certiorari to issue, it would make little sense for the Court not

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[3] The State bases its Petition for Certiorari on the principle that all federal law issues in the case are final for all practical purposes. Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 479-85 (1975). If the Petitions for Certiorari are granted, obviously there should be no bar to this Court reviewing the related and equally final Alaska Supreme Court ruling on the scope of section 6(i).

to review as well the related issue of the scope of the section 6(i) requirement.

On its face, section 6(i) is not limited by reference to the State's knowledge of mineral character at the time of selection. Rather, the first sentence of section 6(i) states that "All grants made or confirmed under this Act shall include mineral deposits" (emphasis added). The second sentence requires that all "sales, grants, deeds, or patents for any of the mineral lands so granted" be subject to reservation to the State of those minerals (emphasis added); and the third sentence requires mineral deposits from "such lands" to be subject to lease. Since the first sentence indicates that all grants include mineral deposits automatically, the provision does not appear to be

limited by knowledge of mineral character at the time of selection.

This logical reading of the plain language of section 6(i) is fully consistent with the purposes of the provision. As the Alaska Supreme Court properly found, the leasing requirement of section 6(i) was imposed in order to provide the new State of Alaska with a source of revenue for its operations. Appendix A at A-19 - A-25. Many in Congress were quite concerned that the State lacked a sufficient source of revenue and that the state would consequently be a continuing drain on the federal treasury. The grant of mineral lands and the attendant requirement that those lands be leased was meant to be a major means by which the State could obtain needed revenue.

Obviously, the more lands that are

covered by the leasing requirement, the more revenue that the State may potentially receive. In fact, if the purpose of section 6(i) was to ensure adequate revenue for the state, as found by the Supreme Court, a narrow interpretation of the scope of the provision makes little sense.

This reasoning takes on added importance in the context of this case. As noted above, section 6(i) was meant to be a principal source of revenue for the State. Alaska in fact received considerably more lands, and hence more lands containing minerals, than any other state received upon admission to the United States. Id. at A-21, n.23. And the mineral lands have indeed been a significant source of wealth, for much of Alaska's revenue comes from oil. State's Petition for Writ of Certiorari, at 7.

Yet the Alaska's oil reserves are beginning to decline, and the State must look to alternative sources of revenue. Hardrock minerals may well be such a source, which presumably is why Congress required them to be leased, along with rent and royalty requirements, in the first place. Yet the State does not currently charge rent and royalties for those minerals, and even under the Alaska Supreme Court's opinion, rent and royalties will be charged on only a portion of State lands. By adopting its narrow definition of mineral lands, the Court has therefore substantially diminished the amount of revenue that may be generated. In fact, if the State adopts a narrow interpretation of the definition employed by the Alaska Supreme Court, the State will receive little revenue at all.

The fact that Congress intended the leasing requirement of section 6(i) to apply to all mineral lands is confirmed by the legislative history of the Statehood Act. Section 6(i) was modeled after the School Lands Act, 43 U.S.C. 870(b), which contains a leasing requirement essentially identical to that found in section 6(i). See Appendix A at A-14 - A-15. However, the School Lands Act grant of "mineral lands" included only those lands known to be mineral in character at the time they were granted to a particular state. United States v. Sweet, 245 U.S. 563 (1918). Before the School Lands Act, "mineral lands" were excluded from grants to states for use for public schools, id., which led to a great deal of confusion and litigation over what was known about the mineral character of school lands at the time

they were granted under the School Lands Act.[4]

While passage of the School Lands Act allowed states to take title to "mineral lands," it did not solve the problems of litigation, for the Act applied only to lands granted after 1927. Letter from Secretary of the Interior to Senator Nye, quoted in S. Rep. 1104, 72nd Cong., 2d Sess., at 2-3 (1933). Congress accordingly enacted a final fix whereby mineral character would be determined when title passed to the state, with an issuance of patent to conclusively resolve all problems of title. Act of

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[4] The result was "much vexatious and costly litigation" over whether lands were known to contain minerals at the time of transfer. Letter from the Secretary of the Interior to the Honorable Robert Stanfield, Chairman of the Senate Committee on Public Lands and Surveys, January 5, 1926, quoted in S. Rep. 603, 69th Cong., 1st Sess., at 12 (1926).

June 21, 1934, 48 Stat. 1185, codified as 43 U.S.C. 871(a) (repealed).

Congress initially considered adopting a substantially similar approach for Alaska's mineral lands, proposing in a section 6(k) to define the time at which mineral character would be determined.[5] However, it quickly decided to reject this definition because to do so would hold up the State's receipt of its lands. Hearings Before the House Committee on Interior and Insular Affairs on Hawaii-Alaska Statehood, 84th Cong., 1st Sess., at 332 (Feb. 15, 1955).

During the discussion of this

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[5] The rejected provision stated: "For the purposes of this subsection, the mineral character of the lands granted to the State of Alaska shall be determined at the time patent issues, and the patent shall be conclusive evidence thereof." See Hearings Before the Senate Committee on Interior and Insular Affairs, Jan. 20-22, 25, 27-29, Feb. 1-4, 24, 1954, at 332.

provision, Delegate Bartlett of Alaska was asked if he felt that it was "surplusage"; he replied that it was not, but asked that it be deleted anyway. Id. In light of the fact that the provision mirrored the School Lands Act procedure, Delegate Bartlett must have felt that it changed the traditional definition of "mineral lands" in some manner. This suggests that by deleting the proposed definition, Congress meant either to return to the traditional system or simply to define "mineral lands" as all lands containing minerals.

Congress clearly meant to choose the second option. Most obviously, the first sentence of section 6(i) flatly states that all grants under the Statehood Act include mineral deposits. Thus, Congress solved the mineral determination dilemma by including mineral deposits in all

state land grants. Second, Congress was well aware of the morass created by the traditional system, Sen. Rep. 1028, 83rd Cong., 2nd Sess., 32 (1954), and in light of the fact that it deleted proposed section 6(k) to enable the State to obtain its lands quickly, it could hardly have intended to set up a mineral character determination system, which could only lead to substantial delays in clearing up clouds on title, due to litigation over whether particular lands were known to be mineral in character at the time of selection by the State.[6]

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[6] Curiously, the Alaska Supreme Court fully acknowledges that their interpretation will result in "administrative problems," and legal disputes as to what point in time constitutes the "time of selection," and "how much must be known about the mineral character of selected lands to qualify them as mineral lands." Appendix A at A-31 & n.33. This is precisely the type of uncertainty that Congress sought to avoid.

For these reasons, Congress clearly intended that the leasing requirement contained in section 6(i) to apply to all mineral lands selected under sections 6(a) and 6(b) of the Act. Because the Alaska Supreme Court ignored this clear Congressional intent and instead adopted a definition of "mineral lands" which may well eviscerate the revenue-generation intent of the leasing requirement, its decision is inconsistent with section 6(i)'s leasing mandate.

CONCLUSION

The Alaska Supreme Court's ruling on the scope of section 6(i) of the Alaska Statehood Act is inconsistent with the plain language of that provision, the purposes and legislative history of the provision, and the rationale underlying the Court's own interpretation of the leasing requirement in the same section

as requiring the payment of rents and royalties to the state. Therefore, Trustees for Alaska et al. respectfully request that this Cross-Petition on the issue of the scope of section 6(i)'s leasing requirement be granted.

DATED: August __, 1987.

By: _____
Ronald M. Zobel
(Counsel of Record
Eric Smith
Robert W. Adler
Trustees for Alaska

NOTICE: This opinion is subject to formal correction before publication in the *Pacific Reporter.* Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

TRUSTEES FOR ALASKA, NUNAM KITLUTSISTI, DINYEA CORPORATION, VILLAGE OF MINTO, ALASKA INDEPENDENT FISHERMEN'S MARKETING ASSOCIATION, ALASKA CENTER THE ENVIRONMENT, SOUTHEAST ALASKA CONSERVATION COUNCIL, FRIENDS OF THE EARTH, Plaintiffs/Appellants, v. STATE OF ALASKA, ALASKA DEPARTMENT OF NATURAL RESOURCES, ESTHER WUNNICKE, Commissioner, Department of Natural Resources, Defendants/Appellees, ALASKA MINERS ASSOCIATION, FAIRBANKS NORTH STAR BOROUGH and JOSEPH E. VOGLER, Defendants-Intervenors/Appellees.	File No. S-1142 **O P I N I O N** [No. 3175-May 1, 1987]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Douglas Serdahely, Judge.

Appearances: Eric Smith and Robert W. Adler, Anchorage, for the Appellants. Robert M. Maynard and Mark P.

Worcester, Assistant Attorneys General, Anchorage, Harold M. Brown, Attorney General, Juneau, for Appellee State of Alaska, Alaska Department of Natural Resources, and Esther Wunnicke, Commissioner, Department of Natural Resources. James N. Reeves, Bogle & Gates, Anchorage, for Appellee Alaska Miners Association. Ronald A. Zumbrun, Robin L. Rivett, and James S. Burling, Pacific Legal Foundation, Sacramento, California, and Michael B. Markham, Borough Attorney, Fairbanks, for Appellee Fairbanks North Star Borough. Thomas R. Wickwire, Fairbanks, for Appellee Joseph E. Vogler.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

MATTHEWS, Justice.

Alaska was granted the right to select 103,350,000 acres of land from the United States under section 6(a) and (b)of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958) (set out in a note preceding 48 U.S.C. § 21 (1982)). Mineral deposits in selected lands were also conveyed, subject to certain restrictions. Section 6(i) of the Act provides:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the

> same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided,* That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

This case presents issues concerning the meaning of the section 6(i) grant and restrictions, and of appellants' standing to bring an action in state court to construe the meaning of the Alaska Statehood Act.

I. PROCEEDINGS BELOW

The appellants are a coalition of environmental, Native, and fishing groups. They filed an action in superior court seeking a declaration that the state's mineral leasing system violates section 6(i) in that the state does not require payment of either rent or royalties in leases of lands subject to section 6(i), and that the state has incorrectly construed the section 6(i) restrictions to apply only to lands known to contain minerals at the time of state selection rather than to all selected lands which contain minerals.[1]

All parties moved for summary judgment. The trial court ruled that the appellants did not have standing, that section 6(i) is enforceable only by the Attorney General of the United States, and that the state's mineral management system does not violate section 6(i). The court did not rule on the question whether the section 6(i) restrictions apply to all state-selected lands containing minerals or merely to those known to contain minerals at the time of selections.

We conclude that appellants have standing to maintain this declaratory judgment action, that the state's mineral leasing system violates section 6(i) because it does not require the payment of rent or royalties on mining leases, and that section 6(i) applies only to those lands known to have been mineral in character at the time of state selection.

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1. Appellants also contend that section 6(i) has become part of the Constitution of Alaska, and has created public trust duties. Thus, appellants argue, to the extent that section 6(i) has been violated, so has the Alaska Constitution and the public trust.

II. STANDING TO MAINTAIN DECLARATORY JUDGMENT ACTION

A. Standing

"Standing questions are limited to whether the litigant is a 'proper party to request an adjudication of a particular issue . . . .'" *Moore v. State,* 553 P.2d 8, 24 n.25 (Alaska 1976) (quoting *Flast v. Cohen,* 392 U.S. 83, 100-01, 20 L. Ed. 2d 947, 961 (1968)). Standing in our state courts is not a constitutional doctrine; rather, it is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions. *Id.* The basic requirement for standing in Alaska is adversity. *Id.*

The concept of standing has been interpreted broadly in Alaska. We have "departed from a restrictive interpretation of the standing requirement," *Coghill v. Boucher,* 511 P.2d 1297, 1303 (Alaska 1973), adopting instead an approach "favoring increased accessibility to judicial forums." *Moore v. State,* 553 P.2d at 23; *see also State v. Lewis,* 559 P.2d 630, 634 n.7 (Alaska) (and cases cited therein), *cert. denied,* 432 U.S. 901, 53 L. Ed. 2d 1073 (1977). Our cases have discussed two different kinds of standing. One is interest-injury standing; the other is citizen-taxpayer standing.

Under the interest-injury approach, a plaintiff must have an interest adversely affected by the conduct complained of. Such an interest may be economic, *Moore,* 553 P.2d at 24; *Wagstaff v. Superior Court, Family Division,* 535 P.2d 1220, 1225 (Alaska 1975), or it may be intangible, such as an aesthetic or environmental interest. *Lewis,* 559 P.2d at 635. The degree of injury to the interest need not be great; "'[t]he basic idea . . . is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.'" *Wagstaff,* 535 P.2d at 1225 & n.7 (quoting Davis, *Standing: Taxpayers and Others,* 35 U. Chi. L. Rev. 601, 613 (1968)).

In the instant case, the appellants assert that they have standing as citizens or taxpayers, rather than because their interests are injured. In prior cases, we have often permitted taxpayers or citizens to challenge governmental action based on their status as taxpayers or citizens. In many such cases, standing has been assumed and not discussed.[2] We have, however, explicitly addressed taxpayer-citizen

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2. *E.g., Thomas v. Bailey,* 595 P.2d 1 (Alaska 1979) (land grant initiative challenged by citizens and taxpayers); *Abrams v. State,* 534 P.2d 91 (Alaska 1975)

(Footnote Cont.)

ficient interest in the disposition of a significant number of acres of the municipality's land to seek a declaratory judgment as to the validity of the disposition." *Id.* at 123.

In *Hoblit v. Commissioner of Natural Resources,* 678 P.2d 1337 (Alaska 1984), we held that plaintiff did not have standing as a taxpayer to challenge the sale of some twenty acres of state land. We distinguished *Gilman* on the grounds that the amount of acreage involved in *Hoblit* was not "significant." 678 P.2d at 1341. Similarly, we distinguished *Lewis* because the " 'magnitude of the transaction and its potential economic impact on the State' which were determinative in *Lewis* are simply lacking here." *Id.* We remanded for a determination as to whether or not the plaintiff had standing because of his status as an adjoining land owner. *Id.* at 1341-42.

This review of taxpayer-citizen standing in Alaska clearly demonstrates that taxpayer-citizen status is a sufficient basis on which to challenge allegedly illegal government conduct on matters of significant public concern. Taxpayer-citizen standing has never been denied in any decision of this court, except on the basis that the controversy was not of public significance,[3] or on the basis that the plaintiff was not a taxpayer.[4] However, *Lewis* and *Carpenter* suggested, without deciding, that taxpayer citizen standing may be denied even in cases of public significance under certain circumstances.[5]

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3. *Hoblit,* 678 P.2d 1337.

4. *Greater Anchorage Area Borough v. Porter & Jefferson,* 469 P.2d 360.

5. The Utah Supreme Court relied in part on *Lewis* and adopted a discretionary denial approach *in Jenkins v. Swan,* 675 P.2d 1145, 1150-51 (Utah 1983):

> If the plaintiff does not have standing under the first step [that is, interest-injury standing], we will then address the question of whether there is anyone who has a greater interest in the outcome of the case than the plaintiff. If there is no one, and if the issue is unlikely to be raised at all if the plaintiff is denied standing, this Court will grant standing. *See, e.g., State v. Lewis,* Alaska, 559 P.2d 630,635 (1977). When standing is predicated on the assertion that the issues involve "great public interest and societal impact," we will retain our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions.

(Footnote Cont.)

In our view, taxpayer-citizen standing cannot be claimed in all cases as a matter of right. Rather, each case must be examined to determine if several criteria have been met. First, the case in question must be one of public significance.[6] One measure of significance may be that specific constitutional limitations are at issue, as in *Carpenter and Lewis.* That is not an exclusive measure of significance, however, as statutory and common law questions may also be very important.[7] Second, the plaintiff must be appropriate in several respects. For example, standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. The same is true if there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action.[8] Further, standing may be denied if the plaintiff appears to be incapable, for

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(Footnote Cont.)

> The Court will deny standing when a plaintiff does not satisfy the first requirement of the analysis and there are potential plaintiffs with a more direct interest in the issues who can more adequately litigate the issues.
>
> The third step in the analysis is to decide if the issues raised by the plaintiff are of sufficient public importance in and of themselves to grant him standing. The absence of a more appropriate plaintiff will not automatically justify granting standing to a particular plaintiff. This Court must still determine, on a case-by-case basis, that the issues are of sufficient weight, *see Jenkins v. Finlinson,* Utah, 607 P.2d 289 (1980), and that they are not more properly addressed by the other branches of government. Constitutional and practical considerations will necessarily affect our decisions in cases where a plaintiff who lacks standing under step one nevertheless raises important public issues. These are matters to be more fully developed in the context of future cases.

6. *See, e.g., Carpenter,* 667 P.2d at 1210; *Gilman,* 662 P.2d at 123; *Lewis,* 559 P.2d at 635.

7. *See, e.g., Coghill v. Boucher,* 511 P.2d 1297 (taxpayer's challenge of lieutenant governor's promulgation of regulations under elections statute).

8. *See Flast v. Cohen,* 392 U.S. 83, 100, 20 L.Ed. 2d 947, 962 (1968) ("federal courts will not entertain friendly suits...or those which are feigned or collusive").

economic or other reasons, of competently advocating the position it has asserted.[9]

The instant case is undoubtedly one of public significance. If appellants prevail, the state must change its method of making state land available for mining. Some 50,000 existing mining claims may be affected. Under the current system, according to the appellants, the state is illegally giving up more than $100,000 annually in royalties. Further, the state is at risk of forfeiting to the United States extensive areas of state lands. The state has correctly acknowledged the significance of this case.

We turn now to consider whether appellants are appropriate parties to bring this suit. They are well represented by competent counsel who have forcefully presented their position. They are not sham plaintiffs; their sincerity in opposing the state's mineral disposition system is unquestioned. On the other hand, the state argues that there is a potential plaintiff with a more direct interest in the validity of the state's system. The state contends that the Attorney General of the United States may bring a forfeiture proceeding under section 6(i) and that this possibility means that appellants lack standing.

In our view, the mere possibility that the Attorney General may sue does not mean that appellants are inappropriate plaintiffs. In *Carpenter,* a resident and voter of the House District in question would theoretically have been more interested in litigating the question whether the district was malapportioned than was the non-resident plaintiff in that case. However, no such person had filed suit. We noted that the issues had been fully presented at trial and on appeal by the plaintiff, and held that she had standing. 667 P.2d at 1210. Similarly, in *Coghill v. Boucher,* we suggested that candidates or political parties might be more interested than registered voters and poll watchers in challenging the vote-counting procedures at issue. However, they had not done so. We noted that if the plaintiffs were

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9. One reason for the adversity requirement is to insure that the issues are well presented. As the Utah Supreme Court said, "When standing is predicated on the assertion that the issues involve 'great public interest and societal impact,' we will retain our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions." *Jenkins,* 675 P.2d at 1150-51.

In the analogous context of class action suits, one important criterion of a party's ability to effectively represent the class is its capacity, for economic and other reasons, to competently advocate its position. *See* 3 B.J. Moore and J. Kennedy, *Moore's Federal Practice* § 23.07[1.-1], at 23-215 (1985) (under Fed. R. Civ. P. 23(a)(4), "it has become routine to inquire into the competence, experience and vigor of the representative's counsel").

not afforded standing, "it may well be that any review of executive activity in this area would be completely foreclosed." 511 P.2d at 1034. Thus, the crucial inquiry is whether the more directly concerned potential plaintiff has sued or seems likely to sue in the foreseeable future. The Attorney General has not sued nor are there any indications that he plans to do so.

Moreover, the appellants' interest in this suit is different than the Attorney General's would be if suit were brought in the United States District Court pursuant to section 6(i). Appellants are interested in preserving to the state the economic value of these lands. The Attorney General, however, would be bringing an action for forfeiture of these lands, contrary to appellants' interest.

For these reasons we conclude that appellants have standing as taxpayer-citizens to maintain this action.

B. A Declaratory Judgment Action Interpreting the Provisions of Section 6(i) May be Maintained.

There has been much litigation concerning the meaning and scope of various statehood act land grants and their restrictions.[10] There have been frequent questions of ownership of the granted lands as between private or governmental contestants.[11] Much of this litigation has occurred in the state courts. The question presented in this case is whether Congress intended to preclude all litigation concerning the meaning of section 6(i) by enacting the proviso which reads:

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10. *E.g., Boyce v. Pima County,* 208 P. 419 (Ariz. 1922); *Jensen v. Dinehart,* 645 P.2d 32 (Utah 1982); *cf., State v. University of Alaska,* 624 P.2d 807 (Alaska 1981).

11. *E.g., Rodgers v. Berger,* 103 P.2d 266 (Ariz. 1940) (appeal from suit by private mining claimant against state and other private claimants to quiet title in mining claim on land granted under statehood act; in trial court, state alleged it was owner because land was a school section; state did not appeal trial court's judgment for plaintiff); *Texas Pacific Coal & Oil Co. v. State,* 234 P.2d 452 (Mont. 1951) (corporation's suit against state to quiet leasehold title to oil and gas deposits under certain school land acquired by state under state enabling act); *cf. Lassen v. Arizona,* 385 U.S. 458, 17 L. Ed. 2d 515 (1967) (appeal from Arizona Supreme Court ruling in case between two state executive agencies to compel compensation to trust created under New Mexico-Arizona Enabling Act); *State v. Walker,* 301 P.2d 317 (N. M. 1956) (suit between State Highway Commission and Commissioner of Public Lands concerning rights of way or easements over state trust lands granted under New Mexico Enabling Act); *Ross v. Trustees of University of Wyoming,* 222 P. 3 (Wyo. 1924) (suit between governor and trustees concerning land granted and confirmed by act of admission for university purposes).

> That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

In our view, this question must be answered in the negative. It is clear that Congress intended that only the U.S. Attorney General could bring forfeiture proceedings and that such proceedings could only be brought in the United States District Court for the District of Alaska. No inference can be drawn, however, from either the context or the history of the Statehood Act that forfeiture proceedings were meant to be the only means by which a judicial interpretation of the meaning of section 6(i) could be obtained.

The sole reference to the land grant forfeiture provision which we have found in the legislative history appears in the Senate Report accompanying a 1954 bill providing for the admission of Alaska into the Union, S. 50, 83d Cong., 2d Sess. (1954):

> The Attorney General is authorized to take appropriate proceedings for forfeiture of any of the lands granted to the State which are disposed of contrary to these restrictions. In making the above provision, the committee has followed the practice prevalent in a number of mining States - a practice that has stood the test of time and experience.

S. Rep. No. 1028, 83d Cong., 2d Sess. 32 (1954). This reference is to the forfeiture clause of the Act of January 25, 1927 (commonly called the School Lands Act of 1927) 44 Stat. 1026, codified at 43 U.S.C. § 870(b (1982)), which extended to public land states grants of certain numbered school sections which were mineral in character.[12] This clause has not prevented judicial interpretation of

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12. The proviso in the School Lands Act states:

> That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is

the School Lands Act in non-forfeiture proceedings.[13] We hold that the identical language in section 6(i) has a similar, non-preclusive effect. It would be unusual in the extreme if a state court could not construe the meaning of its state's Statehood Act. In the absence of any indication that Congress intended to bar our state courts from interpreting section 6(i), we conclude that appellants' declaratory judgment action seeking an interpretation of section 6(i) may be maintained.

III. THE STATE'S DISPOSITION OF MINERALS VIOLATES SECTION 6(i) OF THE STATEHOOD ACT

Having determined that appellants have standing to bring this declaratory action, we now turn to their arguments on the merits. Their arguments may be summarized as follows. Section 6(i) of the Statehood Act provides that the state must reserve to itself all of the minerals in the mineral lands granted to the state pursuant to section 6(a) and (b) of the Act. Furthermore, section 6(i) provides that "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." Appellants argue that because the state does not require the payment of rent or royalties from those miners whom the state permits to locate and extract hardrock minerals, the state violates section 6(i) of the Act. Appellants also argue that the state has violated section 6(i) by defining "mineral lands" subject to the lease requirement to mean those lands known to be of mineral character at the time of state selection, rather than all lands selected which are ultimately discovered to be of mineral character.

The appellants' arguments raise questions concerning the meaning of section 6(i), and of Congress's intent in grantino the state mineral rights on the one hand, but restricting the state in its method of disposing of those minerals on the other. To answer these questions, we look to the plain language of section 6(i), to the legislative history of the Statehood Act, and to cases construing section 6(i). We also look to general principles of mining law to understand the framework within which section 6(i) must be analyzed.

(Footnote Cont.)

> purpose in the United States district court for the district in which the property or some part thereof is located.

43 U.S.C. § 870(b) (1982). This proviso is discussed in more detail in part IIIB of this opinion, *infra* p. 21.

13. *E.g., Rodgers,* 103 P 2d 266; *Jensen,* 645 P.2d 32.

A. General Principles of Mineral Disposition

When Congress passed the Alaska Statehood Act, there were three methods for disposition of minerals located on federal lands: location, lease, and sale. Only locations and leases are relevant in the instant case.[14]

The location system is the oldest method of mineral disposition. It originated on the public domain as a matter of custom and was institutionalized by various statutes, the most important of which was the Mining Law of 1872.[15] Under the location system, the first claimant who discovers a valuable mineral deposit on unappropriated public domain, stakes and files a mining claim, and pursues it, has a legally protected interest. The locator is entitled to produce minerals from the deposit without paying rent or royalties, and has the right to obtain fee simple title by means of a patent issued by the United States government. 1 American Law of Mining § 30.01, at 30-3 (2d ed. 1985) (all references to American Law of Mining are to the 1985 edition unless otherwise noted).

Mineral leasing is the primary alternative to the location system. The Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181-263 (1982), is the most important statute governing mineral leases; in many respects it has become the model for other federal mineral leasing acts. 1 American Law of Mining § 20.01, at 20-6-7. The Mineral Leasing Act was passed to supersede the location system as to the minerals it covers because of Congress's perception that important revenues were being lost under the older system.[16]

Under the Mineral Leasing Act, competitive leases are issued on lands known to contain valuable mineral deposits. 30 U.S.C. §§ 262, 272, 283. Bidders buy competitive leases from the government for a premium established at a public sale. 43 C.F.R. §§ 3521.2-2, 3521.2-4, 3521.2-5 (1985). Where valuable mineral deposits are not known to exist, a prospecting permit may be issued to the first qualified applicant *See* 43 C.F.R. § 3510.0-3. If the permittee discovers a valuable mineral deposit, the permittee may be rewarded with a preference right lease. 43 C.F.R. § 3520.1-1.

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14. The sale method pertains to certain varieties of sand and gravel and other common materials. 30 U.S.C. § 601 (1982).

15. Act of May 10, 1872, ch. 152, 17 Stat. 91. Portions of The Mining Act appear at 30 U.S.C. §§ 22-24, 26-30, 33-35, 37, 39-42, 47 (1982).

16. "[R]oyalties and rentals" were required "so that the Government may not be passing to title the natural resources without receiving something in return therefor." H.R. Rep. No. 1059, 65th Cong. 3d Sess., at 20. (1919).

No premium is charged the lessee of a preference right lease for the privilege of leasing. However, both competitive and preference right lessees must pay an annual rental fee[17] and a production royalty, which is a specified percentage of the gross value of the leased substance produced. 30 U.S.C. §§ 262, 283.

Appellants contend that although section 6(i) requires the state to *lease* mineral lands, and presumably to obtain rents or royalties, the state does not in fact receive any revenues when it grants miners the right to produce hardrock minerals from state lands. Thus, appellants argue that the state's mineral disposition method is for all practical purposes a *location* system, except that miners may not receive patent to the mineral estate.

The state responds that section 6(i) does not require a revenue-producing rent or royalty; rather, that choice is left to the state legislature's discretion. The state also asserts that it receives as consideration the continued exploration and development of its lands and the benefits that come from an active mining industry.

We shall next consider the language of section 6(i) and its legislative history to glean Congress's intent in its grant and restriction of mineral lands.

B. Origin of Section 6(i)

As we have already explained in part IIB of this opinion, the restrictive language in section 6(i) was derived from the 1927 School Lands Act.[18] In Lewis, we discussed the School Lands Act in another context:

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17. The fees usually vary from 25¢ to $1.00 per acre, depending on the mineral. 1 American Law of Mining § 20.09[5] *see also* 30 U.S.C. §§ 262,283.

18. Act of January 25 1927 (An Act Confirming in States and Territories Title to Lands in Aid of Common or Public Schools), ch. 57, 44 Stat. 1026, 43 U.S.C. §§ 870-71 (1982).

> 43 U.S.C. § 870(b) (1983) provides:
> The additional grant made by this section is upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral rights in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds and rents and royalties therefrom to be utilized for the support or in aid

(Footnote Cont.)

In 1955, the Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a Constitution on February 5, 1956, which was ratified by the people of Alaska on April 24, 1956. This Constitution adopted by the people of Alaska served as the basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with its terms.

Throughout the process of drafting the Constitution and its adoption, there was considerable public controversy surrounding the issue of federal control over Alaska's power to dispose of its mineral resources. In statehood legislation for other states, Congress had limited land grants to non-mineral lands. Public lands, which were known to be chiefly valuable for commercial mineral production at the time of the grants, were retained in federal ownership for management and disposition under a theoretically unified system of federal mineral law. In part to avoid the litigation over titles which had resulted from this policy, Congress passed the School Lands Act of 1927, 43 U.S.C. § 870. This act extended the original statehood land grants to embrace lands mineral in character. These addi-

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(Footnote Cont.)

of the common or public school: *Provided,* That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

> tional grants, however, were made subject to a mineral alienation condition which prohibited state disposal of land without a reservation of minerals and permitted a forfeiture action instituted by the Attorney General on behalf of the United States in the event of such disposal [43 U.S.C. § 870(b)].
>
> Although the constitutions of most states were written after passage by Congress of the relevant enabling acts, Alaska's Constitution was drafted in the absence of a pre-existing act. While the delegates were therefore unsure of the particular restrictive language which might be chosen by Congress, they were aware of the history of federal control over state disposition of mineral lands and the likelihood that the United States would insist on retaining its usual powers. To many of the delegates and the people of the state, these restrictions were unpopular.

559 P.2d at 636 (footnotes omitted). Thus, we see in the School Lands Act language echoed fifty-one years later in section 6(i) of the Alaska Statehood Act: a requirement that grantee states reserve the mineral interest when disposing of granted lands, and a provision allowing grantee states to dispose of minerals only by lease.

Implicit in this quotation from *Lewis* are several points which must be emphasized. First, prior to the enactment of the School Lands Act, the statehood land grants of many western states did not include certain "school lands" sections which were known to be mineral in character at the time for vesting.[19] *Andrus v. Utah,* 446 U.S. 500, 508, 64 L.Ed. 2d 458, 465 (1980); *see also* 3 American Law of Mining § 60.06[2], at 60-11-13. Second, if lands vested which were in fact of mineral character, *but whose mineral character was not known at the time of vesting,* the state owned the lands and minerals contained therein. *United States v. Wyoming,* 331 U.S. at 443, 91 L.Ed. at 1593.

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19. Title to surveyed sections vested at statehood; title to unsurveyed sections vested upon completion of an official survey. *United States v. Wyoming,* 331 U.S. 440, 443, 91 L.Ed. 1590, 1593 (1947).

Third, in *United States v. Sweet,* 245 U.S. 563, 572-73, 62 L. Ed. 473, 481 (1918), the Supreme Court held that congressional grants of school lands to a state conveyed no title to lands known to be of mineral character, even if the grant did not expressly reserve such mineral lands to the federal government. In other words, states received title to lands of known mineral character only when Congress expressly granted "mineral lands." Finally, the School Lands Act of 1927 served as an express congressional grant of school lands of known mineral character. Most importantly, the term "mineral lands" as used in the School Lands Act[20] is a term of art, and refers to the *time* that the mineral character of the lands was appreciated, not to the ultimately discovered nature of the lands.[21] *See also* Slaughter Memorandum *infra* p. 39.

C. Alaska Constitutional Response to Section 6(i)'s Restrictions

The School Lands Act restrictions had already been incorporated into the Alaska statehood bills pending in the 84th Congress when the delegates for the Alaska Constitutional Convention met in the winter of 1955-56. The restrictions were controversial because they signalled a change from the existing location-patent system to a leasing system. Ultimately, however, the benefits of statehood were seen to outweigh the doubts of some of the delegates concerning the section 6(i) restrictions. The state constitution was adopted containing a provision expressly consenting to the section 6(i) restrictions.[22]

However, the framers also sought to preserve key elements of the existing location-patent system should Congress permit. Thus, they adopted Article VIII, § 11, which provides:

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20. And as used in the Alaska Statehood Act § 6(i). See part IIIE of this opinion, *infra* p. 37.

21. The School Lands Act did not completely eliminate litigation of the question whether lands were of known mineral character at the time of survey, however, because the state's interest in lands of known mineral character vested on the effective date of the School Lands Act, rather than at the time of survey. *See, e.g., Rogers,* 130 P.2d 268.

22. Alaska Const., art. XII, § 13 states:

> All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.

> Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by laws shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

According to one commentator (also a delegate to the Constitutional Convention):

> In part, this provision was inserted in the hope that Congress might recede from its restriction. On the other hand, delegates who concurred in the policy limiting permanent disposal of minerals went along with the proposal because they assumed Congress would stand firm. Most also saw the provision as a demonstration to miners, who might otherwise object to the constitution, that any restrictions applicable to alienation of mineral lands were being imposed from outside and were not the convention's doing.

V. Fischer, *Alaska's Constitutional Convention* 134 (1975).

Congress did not recede from the section 6(i) restrictions. The people of Alaska ratified the constitution in 1956. The Statehood Act was passed by Congress and signed into law on July 7, 1958. Section 8(b) of the Act required the voters to vote in favor of three propositions, one of which was that:

> (3) All provisions of the Act of Congress approved [July 7, 1958] reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

Alaska Statehood Act § 8(c)(1). The voters accepted each proposition at the election held on August 26, 1958, and Alaska subsequently became a state on January 3, 1959. *See generally Lewis,* 559 P.2d at 636-39.

Having examined the origin of section 6(i) and the unsuccessful efforts of Alaska's Constitutional Convention to avoid its restrictions, we now turn to the legislative history for an understanding of Congress's intent underlying section 6(i)'s grant of mineral lands and leasing restrictions.

D. Congress Intended that Alaska Receive Rents and Royalties from Section 6(i) Mineral Leases to Ensure the New State's Economic Viability

The primary purpose of the statehood land grants contained in section 6(a) and (b) of the Statehood Act was to ensure the economic and social well-being of the new state. *Udall v. Kalerak,* 396 F.2d 746, 749 (9th Cir. 1968), *cert. denied,* 393 U.S. 1118, 22 L. Ed. 2d 123 (1969); *United States v. Atlantic Richfield Co.,* 435 F. Supp. 1009, 1016, 1021 n.47 (D. Alaska 1977), *aff'd,* 612 F.2d 1132 (9th Cir.), *cert. denied,* 449 U.S. 888, 66 L. Ed. 2d 113 (1980). One of the principal objections to Alaska's admittance into the Union was the fear that the territory was economically immature and would be unable to support a state government. For example, opponents of statehood claimed that "Alaska is not capable of sustaining statehood unless it is heavily subsidized by the other 48 States of the Union." 104 Cong. Rec. 9498 (1958) (statement of Rep. Smith). Similarly, another opponent to

statehood argued that "The prevailing doubt of Alaska's ability to support itself is evidenced by the generous special considerations which are made for it in this statehood act." 104 Cong. Rec. 12,297 (1958) (statement of Senator Talmadge).

The congressmen who favored statehood conceded that it would impose an additional financial burden on the territory, but they maintained that the Statehood Act sufficiently provided for Alaska's financial well-being. The land grant of 103,350,000 acres was perceived by these congressmen as an endowment which would yield the income that Alaska needed to meet the costs of statehood. Representative Dawson said that:

> All grants include the mineral rights, but these rights must be retained by the State if the lands pass into private ownership. In other words, the mineral rights will always belong to the people of Alaska, and never to private individuals . . . .
>
> These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.

104 Cong. Rec. 9361 (1958). The importance of mineral revenue to the new state is also highlighted by the following colloquy between Representative Miller and Alaska Territorial Senator William Egan:

> Miller: Do you see where you would get much income out of this 103 million acres you might select around, bearing in mind most of the forests and good land has been set aside by the Government now, or by the military? How much income would you derive from that to begin with?
>
> Egan: As to how much income would be derived, that would be entirely problematical, depending on the values that would be found there. . . . There are known deposits of almost every type of mineral.
>
> . . . .
>
> . . . I feel there would be development . . .

Statehood for Alaska: Hearings Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs, 85th Cong., 1st Sess. 201-02 (1957) (remarks of Rep. Miller and William Egan, Alaska Territorial Senator and President of the Alaska Constitutional Convention).[23]

That Congress recognized the financial burden awaiting the new state is clear from its debates. It is equally clear that the large statehood land grant and the grant of the underlying mineral estate were seen as important means by which the new state could meet that burden. Congress, then, granted Alaska the mineral estate with the intention that the revenue generated therefrom would help fund the new state's government.

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23. *See also* 104 Cong. Rec. 9360-61 (1958) (further remarks of Rep. Dawson remarks of Rep. O'Brien); 104 Cong. Rec. 12,012 (1958) (remarks of Sen Jackson).

The 103,350,000 acre grant ultimately provided in section 6(a) and (b) of the Statehood Act was one of unprecedented size whether considered either absolutely or as a percentage of the total land area of the state. H.R. Rep. No. 624, 85th Cong., 1st Sess. (1957), *reprinted in* vol. 1 Alaska Statutes "History of Alaska Statehood," at 20. As the colloquy between Representative Miller and William Egan suggests, another rationale for the unprecedented size was that the federal government had already reserved the most valuable land and the new state would, in effect, have second choice. In the House, Representative Saylor said that "the choice areas, more than 95 million acres, have been reserved for Federal agencies." 104 Cong. Rec. 9340 (1958). In Senate discussion of the federal reservations, Senator Robertson read a portion of the House report on the Act: "[T]his tremendous acreage of [federal] withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people." 104 Cong. Rec. 12,019 (1958). Thus, the larqe grant of 103 million acres was deemed necessary because the lands available for state selection were perceived to be only marginally productive.

Furthermore, Congress recognized that the agricultural potential of the statehood grant land was limited. In debate, Senator Byrd commented: "In all of the more than 365 million acres of land in Alaska, only 2 million or about one-half of 1 percent, are arable." 104 Cong. Rec. 12,336 (1958). Because Congress realized that agricultural development would not yield the revenue that Alaska would need to support statehood, the Act contained the provision granting the new state title to the mineral estate underlying the land grants. Senator Kuchel said in debate:

> I believe, however, on the basis of the values of property in Alaska as they have been estimated, the tremendous wealth in the ground in minerals...,the State of Alaska will be able to make maximum use of the property which it will obtain under the bill from the Federal Government. This provision constitutes one additional assurance. I feel sure that economically the new government will succeed.

104 Cong. Rec. 12,035 (1958).

The leasing restriction[24] in section 6(i) was intended to further the goal of state revenue production. As we have discussed, the restriction was taken from the 1927 School Lands Act. That language was copied advisedly so that Alaska would be on an equal but not a favored footing with other public land states with respect to the

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24. Appellants and the state agree that the third sentence of section 6(i) requires that mineral deposits be disposed of only by lease. Intervenor Alaska Miners Association argues that the "shall be subject to lease" language is merely permissive "[A]ll that this sentence requires is that 'leasing' be one of the mechanisms through which these lands would be made available for mining development. It does not require that leasing be the *only* disposal mechanism." (Emphasis in original.)

The Miners' position on this point is contradicted by the structure of section 6(i). If the third sentence was not meant to express the exclusive method of mineral disposition, it need not have been set forth at all. Further, the legislative history demonstrates a uniform belief that section 6(i) required leasing. For example, the Senate Committee Report concerning language that eventually became section 6(i) states:

> Subsection (k) [of S. 50, 83d Cong., 2d Sess. (1954)] provides that all grants made or confirmed under the act shall include mineral deposits. Thus, the fact that the lands desired by the State are known or believed to be valuable for minerals will not preclude the State from exercising its right of selection with respect to them under the several grants. *However, in order to give an added measure of protection to the new State government, which inevitably will be inexperienced and untried, the committee amendment provides for certain restrictions* upon the disposition by the State of mineral lands which it may select under the 100-million-acre grant provided in subsection (b) or the 2,550,000-acre grant made in subsection (c). The restrictions are that the State must retain title to all the minerals in these lands, whenever any of them are sold or granted. *The State may dispose of the minerals in these lands only by lease* in such manner as the State legislature may direct.

S. Rep. No. 1028, 83d Cong., 2d Sess. 32 (1954) (emphasis added).

The Miners' argument that Congress intended the "shall be subject to lease" provision to be permissive is belied by the Miners' testimony objecting to this provision before the House Subcommittee on Territorial and Insular Affairs on March 15, 1957:

(Footnote Cont.)

disposition of mineral lands.[25] The School Lands Act leasing requirement was expressly intended to be productive of proceeds, rents, and royalties, and congressional history indicates that the same result

(Footnote Cont.)

> Following is the statement of the Alaska Miners Association relative to *mandatory leasing of mineral rights* on all lands reserved to the new State of Alaska.
>
> . . . .
>
> We. . . . believe that the grant of mineral rights on all these lands was done to aid the new State in meeting the added expense of statehood . . . .
>
> We believe that the well-intended actions contained in the enabling legislation will have an adverse effect and the *mandatory leasing of mineral rights* by the new State of Alaska under the conditions imposed would irreparably damage the development of Alaskas mineral resources . . . .
>
> We believe that the Legislature of the State of Alaska should be allowed to determine the disposition of the mineral rights on all State lands except those specifically reserved for schools . . . .
>
> All lands so claimed [by the state] shall have the mineral deposits reserved to the State and *it shall be mandatory that the State lease the mineral rights;* forfeiture of rights could result if disposed of contrary to provisions in the bills.

Statehood for Alaska: Hearings on H.R. 50, H.R. 628, and H.R. 849 Before the Subcommittee on Territorial and Insular Affairs, 85th Cong., lst Sess. 217-18 (1957) (statement of Glen D. Franklin, Chairman, Legislative Committee, Alaska Miners Association) (emphasis added) (hereafter *"Hearings on H.R. 50"*). Thus, it is clear that the Miners Association recognized in 1957 that section 6(i)'s provision requiring that mineral lands be subject to leasing was a mandatory provision. Their argument to the contrary today is without merit.

> 25. In other words, the thought was that Alaska should be allowed to obtain mineral lands only if it would administer them in substantially the same manner that States now having mineral land grants are required to administer the lands obtained by them under those grants. This is evident from the close parallelism between the conditions proposed to be imposed upon Alaska and those contained in the 1927 [School Lands] act. (Footnote Cont.)

was intended in Alaska.[26] Further, in congressional hearings, the section 6(i) leasing requirement was equated with the "leasing procedures as provided under the Leasing Act of 1920."[27] As previously noted, the federal Mineral Leasing Act was passed rejecting the location system for certain minerals in order to provide revenue to the United States.

Moreover, although the mineral leasing systems of other states differ from the federal mineral lands leasing system, they are uniform in requiring the payment of rent, or royalties, or both. 3 American Law of Mining § 63.054(d), at 63-28.

> State statutes may be divided into two principal categories describing the manner of payment of consideration for a lease; first, those that require both rents and royalties but credit the former against the latter or cease rental when the payment of royalties begins; second, those that require both rents and royalties as distinct and independent considerations.

Id. at 63-29 (footnotes omitted). We therefore conclude that the leasing requirement in section 6(i), considered in the context of the School Lands Act, the Mineral Leasing Act, other statehood mineral

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(Footnote Cont.)

Memorandum from Herbert J. Slaughter, Chief, Branch of Reference, Division of Legislation, Department of the Interior, to the Honorable E.L. Bartlett, at 7-8 (Nov. 7, 1955) (regarding the mineral lands provision of the Alaska Statehood bills) (hereafter "Slaughter Memorandum").

26. S. Rep. No. 1028, *supra* n.24 (noting the "similar provision for the protection of the mineral school lands," in the School Lands Act); Slaughter Memorandum, *supra* n. 25. In *State v. Lewis,* we explained that

> The lands to be selected by the state included mineral lands so as to be consistent with the rights granted other states as a result of the School Lands Act of 1927. . . . The restrictions placed by Congress on alienation of Alaska's lands were of the same import as those set forth in that Act and applicable to other states.

559 P.2d at 638.

27. Hearings on H.R. 50, *supra* n.24, at 220 (Rep. Aspinall); *see also id.* at 231 (Rep. Abbott).

grants,[28] and mineral leasing systems in other states, mandates a system under which the state must receive rent or royalties for its mining leases.[29]

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28. *See, e.g.*, Oklahoma Statehood Act, Act of June 16, 1906, 34 Stat. 267, 273 (expressly including mineral lands, but prohibiting state from disposing of such mineral lands except by short-term lease). Statehood mineral grants are to be considered in light of the mining policies in existence at the time the grants are enacted. Utah v. Bradley Estates, 223 F.2d 129, 130 (10th Cir. 1955).

29. The state argues that the language in the third sentence of section 6(i), "as the state legislature may direct," gives the state the discretion not to charge rent or royalties. It cites as authority for this proposition language from the Slaughter Memorandum. The memorandum first discusses earlier Alaska statehood proposals allowing the state to sell lands it selected, including mineral rights, with a reservation of a royalty on all minerals produced therefrom. Concerning these proposals, the memorandum states:

> These earlier proposals, it will be noted, differ in a number of respects from the restrictions contained in the bills now pending. In particular, the current language expressly calls upon Alaska to adopt a mineral leasing system, while the earlier versions permitted the mineral deposits to be disposed of along with the surface, provided a royalty interest was reserved by the State. On the other hand, the current language does not attempt to prescribe maximum or minimum rates of royalty as did the earlier versions, but appears to leave the terms of leasing wholly to the discretion of the State legislature. From a practical standpoint, this second difference may be more important than the first, since if the Alaska legislature is left, as H.R. 2535 and S. 49 now intend to provide, with the untrammelled [sic] right to frame its own mineral leasing laws, it can, if it so ch[o]oses, establish priorities that will tend to keep the surface and mineral rights in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concepts of the public interest.

Slaughter Memorandum, *supra* n.25, at 9-10.

We are unable to read this language in Slaughter's memorandum as broadly as the state suggests. The memorandum does not suggest that the state was free from the duty to charge rent or royalties. In fact, Slaughter states that "Alaska should not be accorded greater freedom in the administration of mineral lands than that accorded existing States having Congressional land grants." *Id.* at 2. As noted previously, other states under the School Lands Act were required to lease mineral lands in order to generate rents and royalties.

Although Alaska law requires mining leases for extracting hardrock minerals on those mineral lands thought to be subject to section 6(i),[30] the statutes do not require the payment of rent or royalties. AS 38.05.205, .210. Alaska Statute 38.05.205(b) speaks of an annual rental of not less than the annual labor requirement which would be imposed if the lease were a location. However, no rent actually needs to be paid, because the lessee may credit the value of annual labor performed against the rental. Annual labor is required to ensure that the claim is worked so that the miner does not locate numerous claims and obtain the right to exclude others. 2 American Law of Mining § 7.2, at 102 (lst ed. 1983); *Chambers v. Harrington*, 111 U.S. 350, 353, 28 L. Ed. 452, 453 (1884) ("Clearly, the purpose was . . . to require every person who asserted an exclusive right to his discovery or claim to expend something of labor or value on it as evidence of his good faith and to show that he was not acting on the principle of the dog in the manger."). It is not a source of revenue to the landowner. Alaska's mineral leases are in substance indistinguishable from state mining locations.[31] Because they do not require rents or royalties, the state hardrock mineral leasing laws do not meet the leasing requirement of section 6(i).

E. The Section 6(i) Leasing Requirement Applies Only to Statehood Grant Lands Whose Mineral Character was Known at the Time of State Selection.

The appellants argue that the section 6(i) leasing requirement applies to all lands granted under section 6(a) and (b) which contain minerals. Their argument may be summarized as follows. Under the first sentence of section 6(i), all mineral deposits in selected lands are conveyed regardless of when the deposit's existence is first known. The term "mineral lands" in the second sentence of section 6(i), to which "such lands" in the third sentence of section 6(i) relates, refers to the same subject as the "mineral deposits" grant of the first sentence.

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30. "Hardrock" minerals are those which were subject to location under federal mining laws as of the beginning of statehood, January 3, 1959. A.S. 38.05.185.

31. A letter authored by John Sims, Director of State Office of Mineral Development, described the proposed state leasing system which is now reflected in AS 38.05.205 as a system "which allows a miner on State land virtually all the rights and privileges of the 1872 Federal Mining Law with the express exclusion of patent right." Letter from John Sims, Director, Alaska Office of Mineral Development, to Howard J. Grey, Executive Director, Alaska Miners Association (Feb. 23, 1981).

Thus, all lands containing minerals are subject to the leasing requirement, regardless of when the minerals are discovered.

We agree with appellants that the grant language of the first sentence of section 6(i) contains the key to understanding the scope of the leasing requirement. We do not agree, however, that the grant language was intended to convey mineral deposits in selected lands whose mineral character was unknown at the time of selection. Unknown deposits would be conveyed automatically as a part of the section 6(a) and (b) grants without the use of the section 6(i) grant language. The section 6(i) grant was necessary so that *known* mineral deposits would be conveyed. *See* notes 19-21 and accompanying text, *supra.*

This interpretation is confirmed by the Senate Report on an early statehood bill (S. 50, 83d Cong., 2d Sess., (1954)) which states:

> By the terms of previous statehood bills, and of S. 50 as introduced, the State was to have been permitted, under the land-grant provisions of those bills, to select large acreages of land, but in all previous bills, the State would have been estopped from choosing ...those lands known or even believed to be mineral in character. These severe limitations in previous statehood bills on the State's right to select were not always apparent from the bare language of those measures. Yet they existed within the legal and judicial interpretations which have heretofore been given as to the meanings of certain words and phrases of these previous proposed statehood bills.
>
> If all the resources of value were withheld from the State's right of selection, such selection rights would be of little value to the new State. As a part of this new approach toward statehood, your committee has felt obligated to broaden the right of selection so as to give the State at least an opportunity to select lands containing real values, instead of millions of acres of barren tundra.

> To attain this result, the State is given the right to select lands known or believed to be mineral in character (subsection k of section 5) . . . [32]

S. Rep. No. 1028, *supra* n.24, at 6. The Report explains that subsection 5(k), the precursor to section 6(i), "provides that all grants made or confirmed under the act shall include mineral deposits. Thus, the fact that the lands desired by the State are known or believed to be valuable for minerals will not preclude the State from exercising its right of selection with respect to them under the several grants." *Id.* at 32.

The need for and the meaning of the grant language is also confirmed in the Slaughter Memorandum:

> The bills in the 84th Congress for the admission of Alaska into the Union contain a provision which affirmatively declares that the land grants made or confirmed by those bills shall include mineral deposits, and which then proceeds to impose certain express restrictions upon the manner in which Alaska may administer any mineral lands so obtained by it. . . .

---

32. The report of the Committee on Interior and Insular Affairs on H.R. 7999, which became the Statehood Act, in language reminiscent of the Senate Report makes the same point:

> If the resources of value are withheld from the State's right of selection, such selection rights would be of limited value to the new State. The committee members have, therefore, broadened the right of selection so as to give the State at least an opportunity to select lands containing real values instead of millions of acres of barren tundra.
>
> To attain this result, the State is given the right to select lands known or believed to be mineral in character (sec. 6(i)).

H.R. Rep. No. 624, 85th Cong., 2d Sess. (1957), *reprinted in* 1958 US Code Cong. & Admin. News 2933, 2939. The Committee thus used the phrase "lands known or believed to be mineral in character" as synonymous with the "mineral deposits" language in the first sentence of section 6(i).

> The reasoning which prompted the adoption of the provision in question by the Senate Committee is understood to be (1) that mineral deposits must be expressly mentioned in order for mineral lands to be encompassed by a Congressional land grant to a State; and (2) that Alaska should not be accorded greater freedom in the administration of mineral lands than that accorded existing States having Congressional land grants. . . .
>
> With respect to those situations where, as was true of the Utah grants and the California school section grant, the law making the grant neither affirmatively included nor affirmatively excluded mineral lands, the Supreme Court has held that the failure to mention mineral lands was tantamount to an express exclusion of them from the grant. . . .
>
> The members of the Senate Committee on Interior and Insular Affairs who took an active part in the study of S. 50, 83d Congress, considered that, in the light of the holdings of the Supreme Court, statutory language expressly including mineral deposits within the contemplated land grants to Alaska would probably be necessary in order for these grants to encompass mineral lands.

Slaughter Memorandum, *supra* n.25, at 1-6 (citation omitted). Thus, the grant of mineral deposits in the first sentence of section 6(i) and the term "mineral lands" as used in the second sentence of section 6(i) both relate to mineral deposits in lands of known mineral character.

Appellants cite as support for their interpretation testimony of a representative of the Alaska Miners' Association before the House Subcommittee on Territorial and Insular Affairs on March 15, 1957. The representative, Mr. Franklin, assumed that mandatory leasing applied to all lands selected under what is now section 6(a) and (b)

of the Statehood Act. *See supra* n.24. Several congressmen seemed to join in this assumption. However, the question whether all lands selected under section 6(a) and (b), or merely those lands known to be mineral in character at the time of selection, would be subject to mandatory leasing was not addressed.

Appellants also point out that S. 50, as amended by the Committee on Interior and Insular Affairs (83d Cong., 2d Sess. (1954)), and H.R. 2536 (83d Cong., 2d Sess. (1954)), which closely followed the language of S. 50, contained a final sentence which provided: "For the purposes of this subsection the mineral character of lands granted to the State of Alaska shall be determined at the time patent issues and the patent shall be conclusive evidence thereof." This language was stricken at the request of Delegate Bartlett who stated:

> That amendment is offered at the suggestion of the Governor of Alaska and the Land Commissioner of Alaska. They were somewhat apprehensive about the rapidity with which lands would move to the new State if the requirement remained in that the mineral character of all the land would have to be determined in advance. And the rights of the United States, the attorneys tell me, are adequately protected in the foregoing part of that subsection.

Hawaii-Alaska Statehood: Hearings Before the Committee on Interior and Insular Affairs, 84th Cong., 1st Sess. 332 (1955) (statement of Delegate Bartlett) (hereafter *"Interior Committee Hearings").* The committee chairman asked Delegate Bartlett: "It is your view, Mr. Bartlett, that language is surplusage and is not necessary?" Delegate Bartlett answered: "I do not think it is surplusage, but I will agree with the Governor and the Commissioner of Lands of Alaska, that had best be deleted." *Id.* The appellants argue that by agreeing to the deletion of this language, Congress must either have intended to utilize the traditional test of mineral lands or to define mineral lands as those containing minerals no matter when the minerals are discovered. The argument continues that since Congress was aware that considerable litigation had resulted under the enabling acts of other states as to whether lands were or were not mineral in character, Congress could not rationally have intended to employ the traditional test.

While we agree that administrative problems would be avoided if the section 6(i) limitations applied to all lands granted under section 6(a) and (b), we think it is reading too much into the deletion of the quoted language to conclude that Congress meant by the deletion to change the meaning of "mineral lands" as used in the second sentence of the section. The "determination at patent" language demonstrates that Congress intended the section 6(i) limitations to apply only to section 6(a) and (b) lands of known mineral character. If this were not so there would be no reason for the determination of mineral character at patent. There is no suggestion that Congress intended to change the meaning of "mineral lands" in the second sentence by deleting the final sentence. Both the Chairman and Delegate Bartlett referred to this amendment as "pro forma," a characterization which could not accurately be used if the amendment were intended to change the definition of mineral lands. *Interior Committee Hearings, supra* p. 41, at 331, 333.

Appellants' final point is that construing "mineral lands" to mean all lands where minerals are found would further the congressional policy of assuring that the State of Alaska not squander the resources which it was granted. While it is true that the broader definition of mineral lands advocated by appellants would extend the protection of the section 6(i) restrictions, that does not mean that those restrictions were meant to have the reach which appellants contend. The context and history of section 6(i) heretofore cited persuades us that its restrictions were intended to apply only to lands whose mineral character was known at the time of selection.[33]

CONCLUSION

We conclude that appellants have standing to maintain this declaratory judgment action, that the state's mineral leasing system violates section 5(i) of the Statehood Act because it does not require the payment of rent or royalties on mining leases, and that section 6(i) applies only to those lands known to have been mineral in character

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33. For convenience, we have referred to the relevant event as the time of selection. Whether this is the time that the state files its selection application, or some later event such as the tentative or final approval of the selection, is not an issue in this case or on which we express an opinion. Further, we observe that there is room for debate concerning how much must be known about the mineral character of selected lands to qualify them as mineral lands. We also intimate no view on this question as it is not before us.

at the time of state selection. Appellants' state constitutional and public trust theories depend on the meaning of the grant and restrictions of section 6(i). Since section 6(i) directly controls, we have no occasion to examine those theories further. For the above reasons, the judgment is REVERSED and this case is REMANDED with directions to enter a declaration in accordance with this opinion and for such other further proceedings as may be appropriate.[34]

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34. The intervenors raise several other points in defense of the judgment below. We have examined each of them and find that they lack merit.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

TRUSTEES FOR ALASKA, et al.,

Plaintiffs,

vs.

STATE OF ALASKA, et al.,

Defendants,

ALASKA MINERS ASSOCIATION, et al.,

Defendants-Intervenors.

Case No. 3AN-83-9862 Civil

MEMORANDUM DECISION AND ORDER REGARDING MOTIONS FOR SUMMARY JUDGMENT

The issues presented in this case were raised when plaintiffs Trustees For Alaska, et al. ("Trustees") filed their motion for summary judgment on May 23, 1984, defendants State of Alaska, Department of Natural Resources, et al. ("State") opposed plaintiffs' motion and cross-moved for summary judgment on May 29, 1984. Several parties, including the Alaska Miners Association, Fairbanks North Star Borough, and Joseph Vogler, intervened in this action and joined defendants' cross-motion for summary judgment and/or filed their own motions for summary judgment herein. Oral argument was held herein on November 20, 1984, and supplemental briefing on the issue of standing was submitted shortly thereafter. Also, an amicus curiae brief was submitted by the Resource Development Council. The Court then took the parties' cross-motions for summary judgment under advisement.

Plaintiffs and defendants/intervenors agree and the Court finds, that there are no issues of material fact presented by the parties' cross-motions for summary judgment, and that the issues raised by such motions are legal ones. The issues all concern the interpretation

of state and federal law for which imposition of summary judgment is appropriate.

For the reasons discussed below, the Court concludes that defendants/intervenors' motions for summary judgment must be GRANTED and plaintiffs' motion for summary judgment must be DENIED.

Plaintiffs contend that the mining location system adopted under AS 38.05.185 *et seq.* fails to comply with § 6(i) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958). Plaintiffs argue that § 6(i) requires the state to charge reasonable rents for the production of hard rock minerals from state land, and that the state has failed to do so. Plaintiffs further argue that § 6(i) of the Statehood Act is incorporated into Alaska's Constitution, and that the state's alleged failure to charge rent or royalties for mineral extraction also violates the state's constitution, as well as the "compact" between the state and federal governments. Finally, plaintiffs argue that Article VIII of Alaska's Constitution creates a public trust doctrine, which the state has allegedly violated.

Defendants and defendants/intervenors challenge plaintiffs' standing and/or the existence of a private cause of action by which to raise the foregoing issues. To the extent plaintiffs have standing and a viable cause of action, defendants and defendants/intervenors argue that the state's mineral production license system essentially complies with § 6(i) of the Statehood Act, and that plaintiffs' "public trust" doctrine arguments are without merit.

Standing/Private Cause Of Action/Jurisdiction

Initially, the Court concludes that plaintiffs lack standing to seek judicial resolution of these issues here. Whether a party has standing depends on whether the party has "sufficient personal stake in the outcome of the controversy." This requirement has been described in terms of "injury in fact" and that "its purpose is to assure the adversity which is fundamental to judicial proceedings." *Moore v. State*, 553 P.2d 8, 23 (Alaska 1976); *Hoblit v. Commissioner of Natural Resources*, 678 P.2d 1337, 1340-41 (Alaska 1984). On the evidentiary record in this case, plaintiffs have, in this Court's view, failed to establish the requisite individualized harm, direct interest, or personal state [sic] in the mineral resources being managed under the statutory scheme challenged here. *See State v. Lewis*, 559 P.2d 630, 650 (Alaska 1977) (Burke, dissenting.

Plaintiffs argue, however, that *Lewis* controls and would confer standing on them. First, the Court notes that the broad

standing policy enunciated in *Lewis* may have been narrowed recently by the Alaska Supreme Court, *See e.g., Hoblit v. Commissioner of Natural Resources*, 678 P.2d 1337 (Alaska 1984). There, the Court emphasized that "representation of the public will not itself confer standing unless the plaintiff first demonstrates a sufficient 'personal stake' in the outcome of the controversy." *Id.* at 1340. n.3.

More importantly, however, this Court concludes that *Lewis* is distinguishable from the instant case insofar as there exists a potential party who *is* in a better position than plaintiffs to challenge the state's alleged failure to comply with § 6(i) of the Statehood Act — the United States government. Central to the holding in *Lewis* was the Supreme Court's finding that "there is no one in a better position to complain of the constitutional violations alleged" in that case than the citizen/taxpayer-plaintiffs. Here, however, the United States government has a direct and immediate interest in ensuring that the state is complying with the terms of the Statehood Act. Indeed, the last sentence of § 6(i) expressly provides that:

> [A]ny lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Defendant/intervenor Alaska Mining Association also argues that § 6(i) neither creates a private cause of action for concerned citizens to seek the enforcement of such provision in state court, nor confers on state court jurisdiction by which to adjudicate such dispute. Defendant argues that jurisdiction for the adjudication of the issue of the state's compliance or noncompliance with the terms and provisions of the Statehood Act, including § 6(i) — a federal statute — have been expressly and exclusively conferred upon federal court through the last sentence of § 6(i). The Court agrees with defendant/intervenor's contention that § 6(i) of the Statehood Act does not create a cause of action for private litigants to seek enforcement of the terms of that provision. Given this conclusion, the Court finds it unnecessary to reach the question of whether the state court has jurisdiction to adjudicate the issues raised by plaintiffs.

Accordingly, this Court concludes that plaintiffs' action must fail, as a matter of law, as a result of plaintiffs' lack of standing and

the absence of a viable, private cause of action for the enforcement of § 6(i).

Compliance With § 6(i)

Assuming, however, that plaintiffs have standing and a viable, private cause of action by which to challenge the state's alleged noncompliance with § 6(i), (and assuming further that this Court has jurisdiction to adjudicate such issue), the Court concludes that the state's mineral management scheme in general, and that the production licensing procedure in particular (AS 38.05.207), essentially comply with the requirement of § 6(i) that "mineral deposits...shall be subject to lease by the state... ." although the statute refers to the property interest conferred upon miners as a "license" rather than a "lease," the Court concludes that the statutory scheme essentially establishes a lease-type arrangement. No fee simple interest or permanent possessory interest is conveyed; the state may revoke or limit such interest under certain circumstances; and an exchange of consideration is required in order to obtain such interest. Specifically, the consideration required is the miner's performance of annual labor of at least $200 per year per mining claim. AS 38.05.210. That such consideration takes the form of services, rather than cash rent or royalty payments, is, in this Court's view, legally insignificant.

As the Court understands it, the gravamen of plaintiffs' compaint is that the state is not exacting cash rent or royalty payments or sufficient in-kind consideration for the extraction of hard rock minerals. Plaintiffs argue that the state's mineral management scheme is a "giveaway" program and that the $200 annual labor requirement is, at best, merely "nominal" consideration or a "sham" payment. The Court disagrees. In this Court's view, the question of the exact *amount* of consideration to be paid for the right to develop hard rock minerals — i.e., whether the $200 annual labor requirement should be substantially increased and/or required to be paid in the form of cash — is a policy question for resolution by the legislative rather than judicial process. In this regard, the Court notes that Congress conferred broad discretion upon the state legislature to fashion an appropriate mineral lands management scheme when, in § 6(i), it provided that "mineral deposits in such lands shall be subject to lease by the state *as the state legislature may direct.*" (Emphasis added.). The exact amount and form which such consideration should take are thus left to the broad discretion of the state legislature, and the political process embodied therein.

Article VIII - Alaska's Constitution

Finally, plaintiffs contend that the state's alleged failure to comply with § 6(i) violates Article VIII of Alaska's Constitution, that the terms of § 6(i) are allegedly incorporated in Article VIII, that such alleged noncompliance violates a "public trust" doctrine allegedly created by Article VIII, and that such noncompliance further violates the state-federal "compact" established by the Statehood Act. The Court concludes that these arguments also lack merit.

First, the Alaska Supreme Court has expressly held, in *State v. Lewis*, 559 P.2d 630, 639 (Alaska 1977), that Alaska's Constitution was not amended by the Statehood Act, and does not include § 6(i) as an implied provision of Article VIII. Second, the Court rejects plaintiffs' contention that Article VIII creates a "public trust" doctrine, which imposes fiduciary obligations on state officials, enforceable by concerned citizens or taxpayers through a private cause of action, to manage natural resources in a manner consistent with such citizens' interpretation of the state constitution. *See State v. Lewis, supra,* 559 P.2d at 635 n. 15 (recognizing Art. VIII, § 16 of the Alaska Constitution which confers on the governor the authority to enforce state compliance with constitutional requirements). Nor have plaintiffs cited the Court to competent authority recognizing the viability of such privately enforceable "public trust" doctrine under the state constitution. Finally, for the reasons discussed above, the Court rejects plaintiffs claims that any alleged breach of the federal-state "compact," i.e., the Statehood Act, may be adjudicated by concerned citizen/taxpayer-plaintiffs in a private cause of action in state court.

CONCLUSION

For the foregoing reasons, the Court concludes that defendants' and defendants/intervenors' motions for summary judgment must be GRANTED and plaintiffs' motion for summary judgment must be DENIED.

DATED at Anchorage, Alaska this 14th day of June, 1985.

Douglas J. Serdahely
Judge of the Superior Court

87-371

Supreme Court, U.S.
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No. ~~85-896~~

In The
Supreme Court of the United States
October Term, 1987

TRUSTEES FOR ALASKA, *et al., Cross-Petitioners,*

v.

STATE OF ALASKA, *et al., Cross-Respondents,*

and

ALASKA MINERS ASSOCIATION, *Cross-Respondent,*

and

FAIRBANKS NORTH STAR BOROUGH, *Cross-Respondent,*

and

JOSEPH VOGLER, *Cross-Respondent.*

On Petitions for Writ of Certiorari to the Alaska Supreme Court

FAIRBANKS NORTH STAR BOROUGH'S RESPONSE TO CROSS-PETITION FOR WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

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No. 87-206

In The

Supreme Court of the United States

October Term, 1987

TRUSTEES FOR ALASKA, *et al., Cross-Petitioners,*

v.

STATE OF ALASKA, *et al., Cross-Respondents,*

and

ALASKA MINERS ASSOCIATION, *Cross-Respondent,*

and

FAIRBANKS NORTH STAR BOROUGH, *Cross-Respondent,*

and

JOSEPH VOGLER, *Cross-Respondent.*

On Petitions for Writ of Certiorari to the Alaska Supreme Court

FAIRBANKS NORTH STAR BOROUGH'S RESPONSE TO CROSS-PETITION FOR WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

STATUTE INVOLVED

Section 6(i) of the Alaska Statehood Act, 48 U.S.C. prec. § 21 declares:

> "All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and

remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska." (Emphasis added.)

———o———

SUMMARY OF ARGUMENT

The term "mineral lands" as found in Section 6(i) of the Alaska Statehood Act follows the well-settled traditional and historical definition of that term. As such it refers to only those lands known to have been of mineral character at the time the state selected the subject land. There is no evidence that Congress intended a different result or that this definition thwarts the will of Congress. There is no reason for this Court to consider upsetting this traditional definition.

———o———

ARGUMENT

I

SECTION 6(i) REFERS ONLY TO "MINERAL LANDS" AND THE MINERAL CHARACTER OF LAND IS DETERMINED AT THE TIME OF STATE SELECTION ONLY

The State of Alaska is required by Section 6(i) of its statehood act to lease, rather than utilize some other

form of contract, minerals on certain state lands. The cross-petition questions whether or not Section 6(i)'s leasing requirement applies to minerals found on *all* state lands rather than just those minerals found on "*mineral lands,*" which by traditional definition are those lands known to have been of mineral character at the time the state selected the land for its own inventory.

Cross-petitioners, Trustees for Alaska (Trustees), have never advanced any compelling reasons why this Court should upset the well settled definition of mineral lands. While the Trustees did manage to persuade the Alaska Supreme Court that Section 6(i) requires leasing on all of the state's mineral lands, the court below correctly confined its ruling to mineral lands only.

Trustees are incorrect in claiming that the Section 6(i) reservation requirements apply to *all* state lands. The Act's leasing requirement states that "[m]ineral deposits in such lands shall be subject to lease." By the Act's plain language, "such lands" can refer only to the "mineral lands" of the preceding sentence.[1]

Traditionally, "mineral lands" as used in statehood acts and land grants is a term that has been very narrowly defined. It refers to only those lands actually known to have been of mineral character at the time of state selection. There is no reason for the Court to re-evaluate this traditional definition.

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[1] *See, e.g., First Charter Financial Corp. v. United States,* 669 F.2d 1348, 1350 (9th Cir. 1982) (doctrine of last antecedent in statutory construction).

A. Traditional Federal Law Holds That the Date of Mineral Characterization of Land Is the Date of State Selection

Because the original lower 48 states' statehood school land grants gave to the states only nonmineral lands, it was necessary to segregate mineral from nonmineral lands. To do this a date certain of mineral characterization had to be set. Otherwise, title uncertainty would arise on "nonmineral" land later found to contain minerals. This reference date for determining mineral character was established to be the date of state selection. *Wyoming v. United States*, 255 U.S. 489 (1921); *Shaw v. Kellogg*, 170 U.S. 312, 332 (1898). In *Wyoming* this Court relied upon the holding in *Colorado Coal and Iron Co. v. United States*, 123 U.S. 307, 328 (1887), that "[a] change in the conditions occurring subsequently to the sale [or in Wyoming and here the grant], whereby new discoveries are made, or by means whereof it may become profitable to work the veins as mines, cannot affect the title as it passed at the time of the sale." *Colorado Coal*, 123 U.S. at 328; *Wyoming*, 255 U.S. at 498. *See also Deffeback v. Hawke*, 115 U.S. 392, 404-05 (1885).

This traditional standard follows from practical requirements which are equally applicable today. Because Section 6(i) of Alaska's Statehood Act sets limits on the disposition of mineral lands, a potential purchaser of state land must know whether or not the land is mineral and subject to the restrictions. This understanding must remain constant for security of title.

For these reasons it is clear that the alienation restrictions of Section 6(i) apply only to mineral lands

defined as only those lands known to have been of mineral character at the time of state selection.

B. Congress Intended the Mineral Land Characterization to Relate to the Time of State Selection

Congress must have been aware of the traditional meaning of mineral lands when it enacted Section 6(i). *See* Sutherland, *Statutory Construction* § 45.12 (4th ed. 1984) ("legislative language will be interpreted on the assumption that the Legislature was aware of existing . . . judicial decisions"). Congress, in reconciling the need for a state to preserve its mineral resources against the need for mineral development and certainty of title in non-mineral lands, understood that mineral character is established as of the date of selection.

References to mineral lands in congressional considerations of Alaska statehood refer to a characterization at time of selection. For example, in S. Rep. No. 1028, 83d Cong. 2d Sess. subsection k p. 32 (1954), it is reported that the new state shall acquire mineral deposits and "[t]hus, the fact the lands desired by the State are *known or believed to be valuable for minerals* will not preclude the State from exercising its right of selection." *Id.* (emphasis added). Thus, the report refers to a knowledge or belief at the time a state selects that land.

Despite the urging of the Trustees, there is no indication that Congress intended to upset the long line of federal holding that the date of characterization of "mineral lands" in state land grants is the date of state selection. *See, e.g., Wyoming v. United States*, 255 U.S. at 489. Absent an explicit congressional repeal of a rule

of law such a repeal should not be presumed. *See Girouard v. United States,* 328 U.S. 61, 69 (1946), and *Carey v. Donohue,* 240 U.S. 430, 437 (1916).

Trustees make much of the decision by Congress not to require a preselection survey of selected lands for mineral character. Cross-petition at 16. The only reason this was omitted was to facilitate the speedy acquisition of lands by the state. As Delegate Bartlett stated at hearings before the House Committee on Interior and Insular Affairs on the Hawaii-Alaska Statehood Act, 84th Cong. 1st Sess. 332 (Feb. 15, 1955), Alaskans "were somewhat apprehensive about the rapidity with which lands would move to the new State if the requirement remained in that the mineral character of all land would have to be determined in advance." Finally, the only reason that Bartlett did not think the language calling for preselection characterization was "surplusage" was because it was perceived that the preselection survey of mineral character was a substantive requirement. *Id.*

For these reasons there is no justification to define mineral lands as any lands other than those known to be of mineral character at the time of state selection. All other lands are, by traditional tests of this Court, not mineral land and not subject to Section 6(i) requirements. *See, e.g., Wyoming, supra.*

C. Historical Background of the School Lands Act Supports the Interpretation That Section 6(i) Applies Only to Mineral Lands

The western states originally were given only nonmineral lands by Congress upon attaining statehood. The practice of segregating mineral from nonmineral lands for

purposes of state selections eventually led to great confusion and title uncertainty. As mentioned in Part A, *supra*, it was unclear what the effect was after statehood of finding minerals on lands originally believed to be of nonmineral character at the time of selection. Ultimately, this Court held that the federal statehood grants of nonmineral land referred only to land not known to be of mineral character *at statehood*. *Wyoming, supra*. Thus, a new problem arose: what lands were known to be of mineral character at statehood?

To remedy these disputes Congress passed the School Lands Act of 1927, 43 U.S.C. § 870, which granted to the states the mineral rights to the previously selected "nonmineral" lands. The School Lands Act also states that such mineral rights could only be leased.

The principal reason for the grant of mineral lands under the School Lands Act was to clear land titles which had fallen into a state of virtual anarchy under the prior system of segregating mineral from nonmineral lands in state land grants. *See, e.g.*, Report of Senate Committee on Public Lands and Surveys, S. Rep. No. 603, 69th Cong. 1st Sess. 5 (1926). Thus, this Act dealing with mineral lands can be seen to be a clear precursor of Section 6(i). And just as the leasing requirement of the School Lands Act applies only to minerals granted in the 1927 Act, Section 6(i)'s leasing requirement applies only to mineral lands.[2] The one major difference between Section 6(i) and

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[2] In fact, it is arguable that the leasing requirement of Section 6(i), by its plain language, refers to an even smaller subset of mineral lands, namely those for which the surface estate has previously been, in the words of Section 6(i), "sold, granted, deeded, or patented."

the School Lands Act is that Section 6(i) omits all references to "rents or royalties."

Simply put, the Alaska Supreme Court's interpretation is correct and well established, and the Trustees have made no significant arguments why this Court should grant review.

D. The State Derives All the Revenue Necessary and Reasonable from All State Lands

The Trustees argue that this Court should redefine the term "mineral lands" so that all mines on all state lands can be subject to the rental or royalty requirement.[3] Trustees imply that the state will be beggared if it is not forced by this Court to impose rentals or royalties on all such lands. This is untrue.

The legislature at any time may impose whatever rents and/or royalties on whatever state lands it wishes. Up to present time it has declined to do so, apparently because the legislature believes a strong minerals industry is preferable to one overburdened by governmental costs.

Trustees' assertion that the state "will receive little revenue at all" from nonmineral lands, Trustees' cross-petition at 13, is also highly misleading. The state already has in place a mineral license production tax on all minerals produced in the state, no matter what type of land is

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[3] Although the Trustees claim the Alaska Supreme Court required rents *and* royalties from mineral lands, the court actually said rents *or* royalties.

involved. *See* Alaska Stat. § 43.65.010. This tax is, for all practical purposes, equivalent to a graduated royalty on net mineral revenues.

This Court should not be misled by Trustees to believe that the State of Alaska will lose any revenues just because a certain scheme of leasing is not required on nonmineral state lands as that term has been traditionally defined. The state legislature, when and if it feels the need, can obtain any sort of revenues it likes. However, this matter is one uniquely appropriate for the deliberations of the people and Legislature of Alaska, not the state or federal court systems.

———o———

CONCLUSION

In passing the statehood act, Congress was aware that Alaska would receive certain mineral lands and provisions were made to prevent the state from unwisely giving those mineral lands away. Congress did not redefine the definition of mineral lands or mineral character. Nor is there any threat that the state will plunge into poverty for failure to charge rents or royalties on all lands, rather than on just mineral lands as required by the court below. This

Court should deny Trustees' cross-petition for writ of certiorari and allow the state to continue to obtain revenues of minerals according to its own discretion.

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In the Supreme Court of the United States

OCTOBER TERM, 1987

ALASKA MINERS ASSOCIATION, PETITIONER

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TRUSTEES FOR ALASKA, ET AL., CROSS-PETITIONERS

v.

STATE OF ALASKA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

Section 6(i) of the Alaska Statehood Act provides that mineral interests in lands selected by the State of Alaska pursuant to Section 6(a) or (b) of that Act may be disposed of only by "lease," and that any lands or minerals disposed of in violation of Section 6(i) shall be forfeited to the United States in a suit brought by the Attorney General of the United States in the United States District Court for the District of Alaska.

The United States will address the following questions:

1. Whether respondents have the standing necessary to permit this Court to exercise jurisdiction under Article III of the Constitution.

2. Whether private parties such as respondents are barred by Section 6(i) from bringing an action in state court seeking a declaratory judgment that the State's mining laws governing the disposition of mineral interests in selected lands do not comply with Section 6(i).

3. Whether Alaska's mining laws violate the restriction in Section 6(i) of the Alaska Statehood Act that minerals may be disposed of only by a "lease" because they permit a person to extract "hard rock" minerals under a location system, similar to that established by the federal Mining Act of 1872, without payment of rents or royalties to the State.

4. Whether the restriction in Section 6(i) of the Alaska Statehood Act that permits minerals in lands selected by the State under that Act to be disposed of only by lease is limited to those lands that were known to be mineral in character at the time they were selected by the State from the United States.

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In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-205

ALASKA MINERS ASSOCIATION, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

No. 87-206

STATE OF ALASKA, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

No. 87-371

TRUSTEES FOR ALASKA, ET AL., CROSS-PETITIONERS

v.

STATE OF ALASKA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

A. *The Statutory Framework*

Sections 6(a) and (b) of the Alaska Statehood Act authorized Alaska to select 103,350,000 acres of land from the vacant, un-

appropriated and unreserved public lands of the United States. 72 Stat. 340. The "primary purpose" of this grant "was to ensure the economic and social well-being of the new state" (86-206 Pet. App. B51 [hereinafter Pet. App.], citing *Udall* v. *Kalerak*, 396 F.2d 746, 749 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969); *United States* v. *Atlantic Richfield Co.*, 435 F. Supp. 1009, 1016, 1021 n.47 (D. Alaska 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888 (1980)). This case concerns the validity of the statutory scheme by which Alaska permits the extraction of so-called "hard-rock" minerals from lands selected pursuant to Section 6(a) or (b).

1. a. Both the Alaska Statehood Act and the state statutory scheme were enacted against the background of the distinction that then existed (and still exists) under federal law between the system of mineral *location* under the Mining Act of 1872, ch. 152, 17 Stat. 91, 30 U.S.C. 22 *et seq.*, and the system of mineral *leasing* under the Mineral Lands Leasing Act of 1920, ch. 85, 41 Stat. 437, 30 U.S.C. (& Supp. III) 181 *et seq.* Under the Mining Act of 1872, " '[d]iscovery' of a mineral deposit, followed by the minimal procedures required to formally 'locate' the deposit, gives an individual the right of exclusive possession of the land for mining purposes, 30 U.S.C. § 26; as long as $100 of assessment work is performed annually, the individual may continue to extract and sell minerals from the claim without paying any royalty to the United States, 30 U.S.C. § 28." *United States* v. *Locke*, 471 U.S. 84, 86 (1985). The 1872 Act also authorizes the claimant to obtain a patent by paying a nominal sum to the United States. 30 U.S.C. 29, 37; *Locke*, 471 U.S. at 86. By contrast, under the Mineral Lands Leasing Act of 1920, a person seeking to extract minerals from federal land may only lease the land, and he must pay an annual rental fee and royalties on any minerals extracted. 30 U.S.C. (& Supp. III) 207(a), 212, 226(b) and (d), 241(a), 262, 283. The location system under the 1872 Act applies to so-called "hard rock" minerals, such as gold, silver, copper, lead, zinc, tin and tungsten, while the leasing system under the 1920 Act applies to coal, oil, gas, oil shale, phosphate, sodium and potassium. 30 U.S.C. 181.

The Alaska Statehood Act and the state statutory scheme also were enacted against the background of provisions in other statehood acts that granted lands for school purposes. See *Papasan* v. *Allain*, No. 85-499 (July 1, 1986), slip op. 1-4. Under those other acts, this Court held that lands that were known to be mineral in character at the time of statehood were excluded from the school grants unless Congress expresssly provided otherwise. *United States* v. *Sweet*, 245 U.S. 563 (1918); *Wyoming* v. *United States*, 255 U.S. 489, 500-501 (1921). In response, Congress passed the Act of January 25, 1927, ch. 57, § 1, 44 Stat. 1026-1027, 43 U.S.C. 870, which extended the school grants to embrace numbered sections that are mineral in character. *Andrus* v. *Utah*, 446 U.S. 500, 509 (1980). The 1927 Act further provided that the mineral rights in such lands must be retained by the State and "shall be subject to lease by the State as the State legislature may direct, the proceeds and rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools" (43 U.S.C. 870(b)).

Section 6(i) of the Alaska Statehood Act (72 Stat. 342) makes applicable to the lands granted to Alaska a set of restrictions that are expressly patterned after those in the 1927 School Lands Act. See Pet. App. B30-B32, B39-B46; *State* v. *Lewis*, 559 P.2d 630, 636 (Alaska), appeal dismissed, 432 U.S. 901 (1977). Section 6(i) provides:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate pro-

ceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

The only distinction between Section 6(i) and the 1927 Act is that Section 6(i) does not require that "the proceeds and rentals and royalties" of mineral leasing be utilized only for school purposes, since the basic grants under Section 6(a) and (b) of the Alaska Statehood Act are not limited to school purposes.

b. The requirement that minerals on selected lands be disposed of only under a "lease" encountered substantial opposition from mining interests and others in Alaska when the question of statehood for Alaska was under consideration by Congress in the mid-1950s. This opposition is reflected in the text and background of the Alaska Constitution, which was proposed by a Convention in 1956 and approved by the people of Alaska later that year. See *Lewis*, 559 P.2d at 636. The basic restrictions of the 1927 School Lands Act had already been incorporated into the pending Alaska statehood bill when the Convention convened. Pet. App. C10; V. Fischer, *Alaska's Constitutional Convention* 134 (1975). As the Alaska Supreme Court explained, those restrictions "were controversial because they signalled a change from the existing location-patent system to a leasing system" for hard-rock minerals (Pet. App. B46). As a result, the Alaska Constitution, as approved by the voters in 1956 and still in effect, retains the distinction between mineral leasing and mineral location. Article VIII, § 12 states that the Legislature "shall provide for the issuance, types and terms of leases" for oil, gas, coal and other minerals that were then subject to the Mineral Lands Leasing Act of 1920 or the Alaska Coal Leasing Act of 1914, ch. 330, 38 Stat. 741. But Article VIII, § 11 provides that "[d]iscovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this Constitution by the people of Alaska, were subject to location under the federal mining laws."[1]

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[1] Section 11 further provides that continuation of rights in those minerals "shall depend upon the performance of annual labor, or the payment of fees,

The Alaska Supreme Court explained that Art. VIII, § 11 was included by the Convention at the instance of delegates who favored a location-patent system for hard-rock minerals, in the hope that Congress might recede from the universal leasing requirement in the pending bill (Pet. App. B49). " 'Most [delegates] also saw the provision as a demonstration to miners * * * that any restrictions applicable to alienation of mineral lands were being imposed from outside and were not the convention's own doing' " (*ibid.* (quoting V. Fischer, *supra*, at 134)). But because the benefits of statehood were thought to outweigh the disadvantages of the "lease" requirement, the Constitution proposed by the Convention and approved by the voters in 1956 expressly consented in advance to such terms or conditions as Congress might attach to the grant of federal lands to Alaska (Art. XII, § 13; see Pet. App. B46-B47 & n.22).

Congress did not recede from the universal "lease" requirement when it enacted Section 6(i) of the Statehood Act in 1958. However, in light of the opposition to that requirement in Alaska,[2] Congress provided in Section 8(b) of the Statehood Act that Alaska's admission to the Union was conditioned upon the voters' consent at a special election to all provisions of the Statehood Act "reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska" (72 Stat. 344). Section 8(b) further provided that if the voters approved this proposition, the Constitution of Alaska "shall be

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rents, or royalties, or upon other requirements as may be prescribed by law," and that "[d]iscovery and appropriation [of such minerals] shall initiate a right * * * to patent of mineral lands if authorized by the State and not prohibited by Congress."

[2] After the proposed Constitution was approved by the people of Alaska in 1956, petitioner Alaska Miners Association (AMA) urged Congress to recede from the mandatory mineral leasing provision now embodied in Section 6(i) and instead to permit the State to implement the mineral location system contemplated by Art. VIII, § 11 of the proposed Constitution for minerals that were subject to location under the federal mining laws. See *Statehood for Alaska: Hearings on H.R. 50, et al. Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 85th Cong., 1st Sess. 217-245 (1957).

deemed amended accordingly" (*ibid.*). The people of Alaska voted in favor of the proposition at a special election on August 26, 1958 (559 P.2d at 639), and Alaska was admitted to the Union on January 3, 1959.

2. In the early years of statehood, state officials did not interpret the "lease" requirement in Section 6(i) to apply to *all* lands selected by the State pursuant to Section 6(a) and (b) of the Statehood Act. Rather, they interpreted it to apply only where the surface estate was sold or otherwise disposed of by the State, with a reservation of mineral interests to the State. Under that construction, Section 6(i) did not restrict the manner in which the State disposed of minerals in those selected lands (presumably the vast majority) that were retained by the State, and the State therefore was free to apply a mineral location system to such lands. See *Status of Mining Claims Staked on State Selected Lands,* 1981 Alas. Att'y Gen. Op. 113, 154-155 (1981) [hereinafter 1981 Alas. Att'y Gen. Op.].

The State's narrow construction of Section 6(i), and the distinction embodied in the Alaska Constitution between mineral leasing and mineral location, were implemented in a law enacted by the Alaska Legislature in 1959 to govern the administration of lands owned by the new State. 1959 Sess. Laws of Alaska (SLA) 229-247. The 1959 legislation provided for the leasing of state lands and the payment of rents and royalties for the extraction of coal, oil, gas and other minerals that are governed by the Mineral Lands Leasing Act of 1920. Art. VIII, § 3, 1959 SLA at 241-244; see Alaska Stat. §§ 38.05.135-38.05.184 (1984). But "all minerals [that were] subject to location under the mining laws of the United States" were made subject to discovery, appropriation and location under the relevant sections of Alaska's mining laws, which in turn had been derived directly from the federal mineral location laws. Art. IX, § 1, 1959 SLA at 246.[3] The only difference was that a claimant under the State's location system could not receive a patent to

[3] The laws of the United States relating to mining claims were extended to the Territory of Alaska by Section 26 of the Act of June 6, 1900, ch. 786, 31 Stat. 329, 30 U.S.C. 49a. The State's mining laws are now codified at Alaska Stat. §§ 38.05.185-38.05.275 (1984).

the mineral interests. However, as required even by the State's narrow construction of Section 6(i), minerals that were reserved to the State when the surface estate in selected land was sold by the State could be extracted only under a lease, on terms approved by the Commissioner of the Department of Natural Resources. Art. IX, 1959 SLA at 246.

3. a. Section 6(i) became the subject of considerable interest in Alaska at the beginning of this decade, when the Attorney General of Alaska undertook an extensive analysis of the scope of Section 6(i) for the Commissioner of Alaska's Department of Natural Resources. 1981 Alas. Att'y Gen. Op., *supra*. In his final opinion, rendered in 1981, the Attorney General concluded, inter alia, that state officials had erred in interpreting the "lease" requirement in Section 6(i) to apply only to mineral interests that were reserved to the State when the surface estate was sold (*id.* at 156-157). In his view, the "overwhelming weight" of the legislative history established that "the leasing restriction [in Section 6(i)] was to apply to all mineral lands" (*ibid.*), while "[t]he approach offered by state officials was not contemplated by anyone prior to passage of the Statehood Act" (*id.* at 157).[4] However, reversing the position he had taken in a publicly circulated draft of the opinion (*id.* at 158), the Attorney General further concluded that Section 6(i) applies only to lands that were known to be mineral in character at the time they were selected by the State (*id.* at 157-166).

b. In response to the Attorney General's opinion, the State Legislature revised the State's mining laws in 1981. 1981 SLA ch. 108. The 1981 amendments provide that hard-rock minerals must be extracted under a lease, even on lands retained by the State. However, this special leasing requirement for hard-rock minerals applies only if the Commissioner first finds that the lands in question were known to be mineral in character at the time they were selected by the State. That finding can be made only through the issuance of a formal land classification order (Alaska Stat. §§ 38.05.185, 38.05.205), and we have been in-

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[4] We believe that the Attorney General's interpretation of Section 6(i) in this respect is clearly correct, and petitioners do not challenge it here.

formed by the Office of the Attorney General of Alaska that no such classification orders have been issued. As a result, even on lands that were known to be mineral in character at the time they were selected, hard-rock minerals continue to be governed solely by the State's mineral *location* system, which does not provide for the payment of rents or royalties to the State.[5]

Moreover, the special hard-rock leasing provisions (unlike the State's general mineral leasing laws applicable to oil, gas and coal) do not provide for the payment of royalties to the State for the extraction of minerals. And although the special leasing provisions do prescribe an annual rental fee, that fee is set at the amount of annual labor necessary to maintain a mining location claim (now $200 per year, Alaska Stat. § 38.05.210(a)), and the lessee is entitled to a credit against his rent for the labor actually performed (§ 38.05.205(b)). The net effect of these provisions is that even if the Commissioner should trigger application of the special hard-rock leasing provisions in the future, the State still would not realize any cash rents or royalties for the leasing or extraction of hard-rock minerals from those lands.

c. In 1982, the Alaska Legislature again amended the State's hard-rock mining laws in response to the Attorney General's 1981 opinion. As explained by the Attorney General in a June 3, 1982 opinion letter to Governor Jay S. Hammond,[6] the 1982 amendments responded to the concern that the State's mineral location system does not satisfy the "lease" requirement in Section 6(i) because it does not provide for particularized review by the State of individual mining claims and does not contain a mechanism by which the State conveys a mining right or other interest to each claimant. The Attorney General observed that although the granting of rights in a special tract "may not be a necessary element of a leasing system, it could be the deciding

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[5] State law also provides for the mining of hard-rock minerals under a lease if the Commissioner determines that the mining would conflict with potential uses of state land (Alaska Stat. § 38.05.185). This provision is not addressed to Section 6(i), and we have been informed by the Office of the Attorney General of Alaska that the only mining leases issued under Section 38.05.205 have been premised on a finding of conflicting uses.

[6] We have lodged a copy of this opinion letter, which was furnished to us by the Office of the Attorney General of Alaska, with the Clerk of this Court.

factor in a judicial determination of whether Alaska's location system is really a leasing system" (Letter at 3). The 1982 amendments authorize the Commissioner to issue a "production license" to each locator of a mining claim who wishes to extract hard-rock minerals. Alaska Stat. § 38.05.205. Although a production license likewise is not conditioned upon payment of rents or royalties, the Attorney General was of the view that the 1982 amendments brought the State into compliance with the Statehood Act because a production license could be regarded as a "lease" for purposes of Section 6(i). Letter at 3-4. The Attorney General acknowledged that it would be better if the license were expressly termed a "lease," but he explained that "this additional cosmetic change proved impossible due to the miners' adamant and vocal opposition to the term" (*id.* at 3).

B. ***The Proceedings In This Case***

1. This suit was filed in state Superior Court in 1983 by the respondent environmental organizations, Native village corporations, and fishing association. They sought a declaratory judgment that the state statutory scheme for the mining of hard-rock minerals on land selected pursuant to Section 6(a) or (b) of the Statehood Act violates the "lease" requirement in Section 6(i) because the State does not receive rents or royalties in return for production licenses or leases and because the State construes the "lease" requirement to apply only to lands that were known to be mineral in character when they were selected. Comp. ¶¶ 40-46, 57-59; Prayer for Relief ¶¶ 1-3, 7.[7]

The trial court granted summary judgment in favor of petitioners (Pet. App. A1-A15). The court first held that respondents do not have standing to seek judicial review (*id.* at A5-A9), because "[o]n the evidentiary record in this case, [respondents] have * * * failed to establish the requisite individualized harm, direct interest, or personal stake in the mineral resources being managed under the statutory scheme challenged here" (*id.* at A5-A6). The court also found that respondents do not have

[7] Respondents raised certain claims under the State Constitution as well (Compl. ¶¶ 47-56, 60-62), but the Alaska Supreme Court did not reach the state-law claims (Pet. App. B85) and they are not at issue here.

standing under a distinct state-law doctrine that permits a citizen or taxpayer to challenge state governmental action (*id.* at A6-A9). On the merits, the trial court held that because Section 6(i) provides that minerals are "subject to lease by the State as the State legislature may direct," the Alaska Legislature had discretion to permit the consideration for a lease (or production license) to be in the form of "services" (the annual labor necessary to maintain a mining claim), rather than cash rents or royalties (Pet. App. A9-A12).

2. On respondent's appeal, the Supreme Court of Alaska reversed and remanded for entry of a declaratory judgment that the state statutory scheme violates Section 6(i) and for other appropriate proceedings (Pet. App. B1-B86). The Supreme Court noted that respondents "assert that they have standing as citizens or taxpayers, rather than because their interests are injured" (*id.* at B9), and it held that respondents have standing in the former capacity (*id.* at B6-B26). The court rejected the State's argument that respondents are not appropriate plaintiffs as citizens or taxpayers because the Attorney General of the United States has authority to challenge the State's hard-rock mining system in a forfeiture proceeding brought under Section 6(i) of the Statehood Act. The court reasoned that respondents "are interested in preserving to the state the economic value of these lands," while the Attorney General "would be bringing an action for forfeiture of these lands, contrary to [respondents'] interest" (*id.* at B25-B26). The court also rejected the State's related contention that the authorization in Section 6(i) for the Attorney General to bring a forfeiture action constitutes an implied, federal-law preclusion of this declaratory judgment action in state court (Pet. App. B26-B31). The court pointed out that there has been much litigation in the courts of other States concerning restrictions on federal land grants (*id.* at B26-B27 & n.11), and it did not read the forfeiture provision in Section 6(i) to require a different result for Alaska (*id.* at B29-B31 & n.13). Indeed, the court believed that "[i]t would be unusual in the extreme if a state court could not construe the meaning of its state's Statehood Act" (*id.* at B31).

On the merits, the Supreme Court found Alaska's hard-rock mining statutes to be substantively "indistinguishable" from a

mineral location system (Pet. App. B70-B71), and it held that the state statutes "do not meet the leasing requirement of section 6(i)" because Section 6(i) "mandates a system under which the state must receive rent or royalties for its mining leases" (*id.* at B66-B67). Based on its exhaustive review of the legislative history of Section 6(i) (see Pet. App. B33-B67), the court concluded that "Congress * * * granted Alaska the mineral estate with the intention that the revenue generated therefrom would help fund the new state's government" (*id.* at B56). In the court's view, "[t]he leasing restriction in section 6(i) was intended to further the goal of state revenue production" (*id.* at B58-B59), especially since Congress equated it with the leasing procedures under the Mineral Lands Leasing Act of 1920, which "reject[ed] the location system for certain minerals in order to provide revenue to the United States" (*id.* at B64-B65). The court also found it significant that the lease requirement in Section 6(i) was "copied advisedly" from the 1927 School Lands Act (*id.* at B59-B63), because the 1927 Act's leasing requirement "was expressly intended to be productive of proceeds, rents, and royalties" (*id.* at B64-B65) and because the laws of the States subject to the 1927 Act "are uniform in requiring the payment of rent, or royalties, or both" (*id.* at B65). Finally, the court rejected the contention that the performance of annual labor worth $200 satisfies the requirement of rents or royalties, since annual labor is required as evidence of good faith that the claim will be worked and "is not a source of revenue to the landowner" (*id.* at B70). The court did, however, agree with petitioners that the leasing requirement in Section 6(i) applies only to lands that were known to be mineral in character when they were selected by the State (*id.* at B71-B84).

3. After the petitions and conditional cross-petition for a writ of certiorari were filed in this Court, the Superior Court, on remand, issued an order and declaratory judgment dated November 9, 1987 (App., *infra*, 1a-8a). Because the Supreme Court's decision referred only to rents *or* royalties, the Superior Court rejected respondents' contention that the declaratory judgment should state that Alaska's statutory scheme must provide for payment of rents *and* royalties (*id.* at 3a-4a). The Superior Court also rejected respondents' contention that the

State must charge rents or royalties that reflect the "fair market value" of the hard-rock minerals in the land (*id.* at 4a). The court reasoned that Section 6(i) was intended to assure the State Legislature "substantial flexibility and discretion in fashioning some appropriate leasing system" (*ibid.*), and it read the Supreme Court's opinion to hold only that "the State has to charge *some* rents or royalties for extracted minerals, i.e., that the State was not free to impose *no* such charges on miners extracting minerals from state mineral lands" (*ibid.* (emphasis in original)). Finally, the Superior Court denied, as premature, respondents' request for an injunction barring the State from allowing extraction of mineral deposits from covered state lands after May 15, 1988 if the State Legislature did not enact a leasing system conforming to the Alaska Supreme Court's interpretation of Section 6(i) by that time (App., *infra*, 5a-6a).

DISCUSSION

Respondents do not satisfy the standing requirements of Article III of the Constitution, and this Court therefore does not have jurisdiction to entertain the petitions or cross-petition for a writ of certiorari. In any event, the issues raised by petitioners do not warrant review. The Supreme Court of Alaska correctly held that the courts of that State are not precluded by Section 6(i) of the Alaska Statehood Act from entertaining an action seeking a declaratory judgment regarding the validity of the State's hard-rock mining laws under Section 6(i). The courts of a number of other States have entertained similar suits, and a declaratory judgment action does not conflict with the Attorney General's distinct authority under Section 6(i) to bring an action for forfeiture of lands or minerals that are disposed of in violation of that Section. On the merits, the Alaska Supreme Court reasonably characterized the State's hard-rock mining laws as essentially a mineral location rather than a mineral leasing scheme, reasonably construed the "lease" provision in Section 6(i) to require the payment of at least some rents or royalties for the extraction of minerals, and reasonably concluded that the State's mining laws fail to satisfy that requirement because Alaska (unlike other western States) does not receive any cash payments for the extraction of hard-rock minerals. This unani-

mous holding that the State's own mining laws are inconsistent with the Alaska Statehood Act presents no issue warranting review by this Court.

By contrast, we find considerable merit in respondents' contention in their cross-petition that the Alaska Supreme Court erred in limiting the "lease" requirement in Section 6(i) to lands that were known to be mineral in character when they were selected by the State. However, because respondents request this Court to grant their cross-petition only if it grants the principal petitions, and because we believe that those petitions should be denied, the cross-petition should be denied as well.

1. Before addressing the questions presented in the petitions and cross-petition, we shall first address an important threshold question not raised by the parties: whether respondents have the Article III standing necessary to permit this Court to review the decision of the Alaska Supreme Court.[8] The "core component" of standing under Article III is that the plaintiff "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U.S. 737, 751 (1984); *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982). In our view, respondents face obstacles under all aspects of this test.

The Superior Court found that respondents "have * * * failed to establish the requisite individualized harm, direct interest, or personal stake in the mineral resources being managed under the statutory scheme challenged here" (Pet. App. A5-A6). Respondents did not challenge that finding, and the Alaska

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[8] The holding below that respondents' declaratory judgment action is not barred by Section 6(i) and that Alaska's existing hard-rock mining laws are inconsistent with Section 6(i) would appear to be sufficiently "final" for purposes of this Court's review under 28 U.S.C. 1257, even though the Supreme Court remanded for the Superior Court to enter the declaratory judgment and that judgment on remand addressed several additional issues regarding the meaning of Section 6(i) that might be relevant to the validity of future amendments to the State's mining laws. Our only reservation on the finality issue arises from the fact that neither court below has yet addressed the availability of injunctive relief, which could raise additional federal issues under Section 6(i). See note 18, *supra*.

Supreme Court did not overturn it. In fact, the Supreme Court acknowledged that respondents "assert that they have standing as citizens or taxpayers, rather than because their interests are injured" (*id.* at B9).[9] Moreover, in holding that respondents have standing as citizens and taxpayers (*id.* at B8-B26), the Alaska Supreme Court did not rely upon the possibility that Alaska's hard-rock mining laws might have a financial impact on the taxpayers who are members or constituents of the respondent organizations. Rather, it appears that under the special standing doctrine applied by the Supreme Court, the mere status of an individual as a citizen or taxpayer is sufficient to give him a derivative interest or stake in significant legal issues concerning the performance of state governmental functions. Althought the courts of the States are not barred by the Federal Constitution from recognizing standing on such a theory, this Court has consistently held that an individual does not satisfy the standing requirements of Article III based on nothing more than his status as a citizen who is interested in the conduct of his government. *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 215-221 (1974); *United States* v. *Richardson*, 418 U.S. 166, 171-175 (1974); *Doremus* v. *Board of Education*, 342 U.S. 429, 433-435 (1952); *Frothingham* v.

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[9] The standing portions of respondents' brief (at 25-31) and reply brief (at 2-11) in the Alaska Supreme Court discussed only the taxpayer-citizen doctrine recognized by the Alaska Supreme Court in *State* v. *Lewis, supra,* and related cases. The briefs did assert that respondents had a "personal stake" in the outcome. But those assertions were made in the framework of the taxpayer-citizen standing doctrine under state-law precedents, and the "personal stake" that respondents alleged was entirely derivative of what respondents alleged to be the *State's* interest in realizing income from rental fees and royalties and avoiding the possible forfeiture of the land. See Appellants' Br. 25-26, 27; Reply Br. 2-3, 5 That stake is not "personal" in the sense of being unique to respondents; it is the interest shared by all taxpayers and citizens of Alaska in having their state government retain its assets and maximize its income from those assets.

Respondents also alleged in the Superior Court that their members or residents used state lands for recreational, commercial and subsistence purposes; that mining adversely affected those uses; and that placer mining polluted streams used by respondents' members and residents. Compl. ¶¶ 1-12. Neither the Superior Court nor the Alaska Supreme Court referred to those allegations of injury, and respondents did not rely on them in their briefs in the Alaska Supreme Court.

Mellon, 262 U.S. 447 (1923); cf. *Allen* v. *Wright*, 468 U.S. at 754-755, 756 n.21; *Valley Forge*, 454 U.S. at 482, 489-490 n.26.

Nor have respondents alleged that the State has spent tax revenues pursuant to a statute in direct contravention of a specific constitutional (or statutory) provision, such as the Establishment Clause, that restricts such expenditures. Compare *Flast* v. *Cohen*, 392 U.S. 83, 102-103 (1968); see *Valley Forge*, 454 U.S. at 479-480; *United States* v. *Richardson*, 418 U.S. at 175. In fact, respondents do not challenge the lawfulness of any taxes or expenditures as such. They merely object to the failure of the State to collect additional, non-tax revenues from other persons. If that theory of standing were adopted, any taxpayer could challenge any actions that have monetary consequences for the government.

Under Article III, "[t]he injury must be 'fairly' traceable to the challenged action, and relief from the injury must be 'likely' to follow from a favorable decision" (*Allen* v. *Wright*, 468 U.S. at 751, quoting *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38, 41 (1976)). In this case, respondents neither alleged in their complaint nor argued in the Alaska Supreme Court that there was a direct correlation between the amount of income the State receives from hard-rock mining on state lands and the amount of money that respondents' members and residents pay in state taxes. Compare *Allen* v. *Wright*, 468 U.S. at 758. Respondents accordingly do not deny that if the State in the past had received the increased mining revenues that respondents seek to compel in this suit, it is possible that the State Legislature would not have amended the State's tax code but instead would have used the increased revenues to furnish additional services, reduce a budget deficit, or increase a budget surplus. Any "injury" respondents' members and residents suffer as a result of the current rates of taxation therefore is not fairly traceable to the challenged action of the State in failing to charge rents and royalties. See *United States* v. *Richardson*, 418 U.S. at 171-172; *Flast* v. *Cohen*, 392 U.S. at 92-93; *Frothingham* v. *Mellon*, 262 U.S. at 487-488; see also *Winpisinger* v. *Watson*, 628 F.2d 133, 139 (D.C. Cir. 1980). Nor would respondents necessarily receive relief from that

"injury" as a result of a decision in their favor in this case. To the contrary, respondents seek an injunction barring all hard-rock mining on state lands under the existing state statutes—relief that obviously would not generate additional revenues. Moreover, even if this suit should cause the State Legislature to amend the state statutes to impose rents and/or royalties in the future, many persons holding mining claims might forgo mining rather than make the payments. Compare *Allen* v. *Wright*, 468 U.S. at 758-759; *Eastern Kentucky Welfare*, 426 U.S. at 40-46. And even if some claimants did continue to mine, the increased revenues might not lead to lower taxes.

In sum, the decision of the Supreme Court of Alaska in this case was, for federal jurisdictional purposes, essentially an advisory opinion. That opinion might provide useful guidance to the Alaska Legislature as it seeks to conform its hard-rock mining laws to Section 6(i) of the Alaska Statehood Act, just as the 1981 Opinion of the Attorney General of Alaska led the Alaska Legislature to amend the State's hard-rock mining laws in 1981 and 1982 (see pages 7-9, *supra*). But the opinion is not subject to review here. This Court held in *Doremus* (342 U.S. at 434):

> We do not undertake to say that a state court may not render an opinion on a federal constitutional question even under such circumstances that it can be regarded only as advisory. But, because our own jurisdiction is cast in terms of 'case or controversy,' we cannot accept as the basis for review, nor as the basis for conclusive disposition of an issue of federal law without review, any procedure which does not constitute such.

See also *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 804 (1985); *Secretary of State of Maryland* v. *J.H. Munson Co.*, 467 U.S. 947, 954 & n.4 (1984); *Revere* v. *Massachusetts General Hosp.*, 463 U.S. 239, 243 (1983). We therefore suggest that the Court deny certiorari because of this jurisdictional defect, as well as for the other reasons set forth below. If the Court denies review, then in any future suit in federal court—including a forfeiture action brought by the Attorney General of the United States—both petitioners and respondents presumably would be

free to relitigate the issues of federal law that were addressed by the Alaska Supreme Court in this case, since the district court in any such suit could not accept a proceeding in state court that did not constitute a case or controversy "as the basis for conclusive disposition of an issue of federal law" (*Doremus*, 342 U.S. at 434). See P. Bator, *et al., Hart & Wechsler's The Federal Courts and the Federal System* 128-129 (1973); cf. *Fidelity Nat'l Bank & Trust Co.* v. *Swope*, 274 U.S. 123, 130-131 (1927).[10]

2. Petitioners' principal contention in this Court is that the state courts should not have entertained this suit, because respondents do not have an "implied right to action" under the Alaska Statehood Act to enforce the "lease" requirement of Section 6(i) and because the authorization for the Attorney General of the United States to bring a forfeiture action implicitly forecloses all private suits arising under Section 6(i). 87-206 Pet. 20-33; 87-205 Pet. 6-9. Both arguments fail.

a. We may assume for present purposes that, under the approach followed by this Court in *Cort* v. *Ash*, 422 U.S. 66, 78 (1975), and its progeny (see, *e.g., Thompson* v. *Thompson*, No. 86-964 (Jan. 12, 1988), slip op. 4-5), respondents do not have an implied private right of action under Section 6(i) that could be brought in federal district court under the general grant of federal question jurisdiction, 28 U.S.C. 1331. See Pet. App. A8-A9. Thus, we may assume that Section 6(i) was not enacted

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[10] It has been suggested that the language in *Doremus* quoted in the text could be read to mean that dismissal of the petition or appeal is appropriate only if the state supreme court *rejected* the federal constitutional challenge in a proceeding in which the plaintiff did not satisfy Article III's standing requirements, and that this Court properly could vacate a state court decision that *sustained* the federal constitutional challenge in such a proceeding. See *Barnes* v. *Kline*, 759 F.2d 21, 63 n.16 (D.C. Cir. 1984) (Bork, J., dissenting), vacated as moot, No. 85-781 (Jan. 14, 1987); L. Tribe, *American Constitutional Law* 114 n.20 (2d ed. 1988). We disagree. In our view, the *Doremus* passage makes clear that a federal court will not give preclusive effect to the unreviewed state court decision in a *future* case, not that this Court could vacate the state court decision on direct review in the *same* case, despite the absence of a case or controversy. The latter suggestion would have been inconsistent with the Court's explicit disclaimer of any suggestion that a state court is barred from rendering an advisory opinion on a federal constitutional question where Article III standing is lacking. 342 U.S. at 434.

for the special benefit of respondents or their members and residents, that the indicia of legislative intent do not reveal an affirmative congressional purpose to provide a private right of action under federal law, that a federal cause of action would not further the purposes underlying Section 6(i), and that respondents' cause of action is typically relegated to state law. Compare *Merrell Dow Pharmaceuticals, Inc.* v. *Thompson*, No. 85-619 (July 7, 1986), slip op. 6-7. But the absence of a right to sue directly under federal law in federal court does not suggest that the state courts erred in entertaining this suit.

The Alaska Supreme Court did not hold that respondents have an implied private cause of action, as a matter of *federal* law, directly under Section 6(i). In fact, the Alaska Supreme Court did not discuss this Court's implied-right-of-action cases. Nor, as the State concedes (87-206 Pet. 31), did respondents assert that federal law afirmatively granted them a cause of action in the Superior Court; instead, respondents relied on the authority of that court, as one of general jurisdiction (see Alaska Stat. § 22.10.020(a) (1982)), to grant relief to the citizens of Alaska who are injured by the State's violation of federal law. See Appellants' Alaska Sup. Ct. Br. 31-32[11]; Reply Br. 6-9. In other words, respondents argued (and the Alaska Supreme Court apparently agreed) that *state* law provided respondents with a cause of action to challenge the validity of the State's hard-rock mining laws and to seek a declaratory judgment regarding the meaning of Section 6(i).

Because the Alaska Supreme Court did not purport to find a right of action under federal law, petitioners' contention cannot be that that Court misapplied this Court's implied-right-of-action precedents. Rather, it is that the Alaska Supreme Court

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[11] Quoting *In re C.D.M.*, 627 P.2d 607, 610 (Alaska 1981) (emphasis in original):

> Where a court is one of general jurisdiction, such as the superior court in the case at bar, it has traditionally been regarded as having the power to hear all controversies which may be brought before a court within the legal bounds of rights or remedies, except insofar as has been expressly and unequivocally *denied* by the state's constitution or statutes.

Accord *Siggelkow* v. *State*, 731 P.2d 57, 61 (Alaska 1987). The Superior Court has broad authority to issue declaratory judgments. See Alaska Stat. § 22.10.020(b); *Jefferson* v. *Asplund*, 458 P.2d 995 (Alaska 1969).

should have applied *Cort* v. *Ash* and its progeny, and that had it done so, it would have found that respondents do not have a cause of action under Section 6(i). See 87-206 Pet. 27-31; 87-206 Reply Br. 4-14; 87-205 Pet. 7-9. However, *Cort* v. *Ash* and this Court's other implied-right-of-action cases over that last fifteen years, including those cited by petitioners, all involved the question whether a plaintiff could bring an action in *federal* court based on a violation of a federal statute.[12] Petitioners cite no authority (and we are aware of none) for the proposition that *Cort* v. *Ash* and its progeny also restrict the power of a state court to entertain a state-created cause of action that includes as an element the violation of a federal statute. In fact, *Merrell Dow* demonstrates otherwise.

The plaintiffs in *Merrell Dow* brought a state-law tort suit in state court, seeking damages based on the alleged mislabeling of a drug in violation of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. (& Supp. IV) 301 *et seq.* *Merrell Dow*, slip op. 1-2. The Court assumed that the FDCA did not grant the plaintiffs an implied cause of action that could be brought in federal court under 28 U.S.C. 1331 (slip op. 6-7), and the Court held that the plaintiffs' state-law cause of action likewise could not be removed to federal court merely because of the presence of a federal issue (the alleged violation of the FDCA) (*id.* at 1, 7, 10). However, the Court made clear that the plaintiffs *could* proceed with their suit in state court, even though they sought to recover damages based on a violation of the FDCA in circumstances where the FDCA itself did not provide an implied right of action for damages (*id.* at 11-12 & n.14; *id.* at 15

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[12] See, *e.g.*, *National Railroad Passenger Corp.* v. *National Ass'n of Railroad Passengers*, 414 U.S. 453 (1974); *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979); *Touche Ross & Co.* v. *Redington*, 442 U.S. 560 (1979); *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11 (1979); *Universities Research Ass'n, Inc.* v. *Coutu*, 450 U.S. 754 (1981); *Northwest Airlines, Inc.* v. *Transport Workers*, 451 U.S. 77 (1981); *California* v. *Sierra Club*, 451 U.S. 287 (1981); *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630 (1981); *Middlesex County Sewerage Auth.* v. *National Sea Clammers Ass'n*, 453 U.S. 1 (1981); *Jackson Transit Auth.* v. *Transit Union*, 457 U.S. 15 (1982); *Daily Income Fund, Inc.* v. *Fox*, 464 U.S. 523 (1984); *Massachusetts Mutual Life Ins. Co.* v. *Russell*, 473 U.S. 134 (1985); *Merrell Dow Pharmaceuticals, Inc.* v. *Thompson*, *supra*; *Thompson* v. *Thompson*, *supra*.

(Brennan, J., dissenting)). See also *Thompson* v. *Thompson, supra* (no implied right of action in federal court to enforce full-faith-and-credit rules in custody disputes, although rules must be enforced in state court); *Crane* v. *Cedar Rapids & Iowa City Ry.*, 395 U.S. 164, 166-167 (1969) (nonemployee's remedy for violation of Safety Appliance Act is state common-law tort suit, brought in state court and subject to state defenses and standards of causation); *Moore* v. *Chesapeake & O. Ry.*, 291 U.S. 205 (1934) (same); *Hart & Wechsler, supra,* at 488 ("federal law does not create the cause of action" under *Crane* and *Moore*). Accordingly, petitioners err in relying on this Court's decisions concerning the availability of an implied cause of action in federal court.[13]

b. The relevant question for present purposes therefore is not whether Congress has affirmatively granted respondents a right to sue directly under Section 6(i) of the Statehood Act, but whether Congress has affirmatively foreclosed the state courts from entertaining a state-created cause of action in which the interpretation of Section 6(i) is at issue—*i.e.*, whether the state cause of action is preempted by the Statehood Act. Compare *Moore,* 291 U.S. at 216 (proper question is whether federal statute "precludes" incorporation of federal safety standard into state law). In our view, the Alaska Supreme Court correctly held that Section 6(i) does not bar this declaratory judgment action in state court. See Pet. App. B26-B31.

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[13] For the same reason, Alaska also errs in relying on three appellate decisions finding no implied private right of action in federal court to enforce the provisions of two statehood Acts. See 87-206 Pet. 23-25, citing *Keaukaha-Panaewa Community Ass'n* v. *Hawaiian Homes Comm'n,* 588 F.2d 1216 (9th Cir. 1978), cert. denied, 444 U.S. 826 (1979); *Price* v. *Hawaii,* 764 F.2d 623, 631 (9th Cir. 1985), cert. denied, 474 U.S. 1055 (1986); *Downer* v. *Graham,* 21 F.2d 732 (8th Cir. 1927). In the first two of these cases, the Ninth Circuit applied the *Cort* v. *Ash* analysis. *Downer* arose prior to *Cort* v. *Ash.* Although language in *Downer* suggests that restrictions in the Arizona-New Mexico Enabling Act (ch. 310, 36 Stat. 557) could not be enforced in a suit brought by a private party against a state official, that Act could not be read to foreclose such a suit in state court: as Alaska points out (87-206 Pet. 26 n.7), Section 28 of that Act (36 Stat. 575), which was not mentioned in *Downer,* expressly preserves the power of the State or any of its citizens to enforce the Act. See pages 23-24, *infra.*

Preemption of state law of course " 'is not favored "in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." ' " *Commonwealth Edison Co.* v. *Montana,* 453 U.S. 609, 634 (1981) (citations omitted); see also *Hillsborough County* v. *Automated Medical Laboratories, Inc.,* 471 U.S. 707, 715 (1985). A court should be especially reluctant to find preemption here. This is not a routine state-law damages action between private parties in a commercial or other context that is actively and pervasively regulated by federal law, such that entertaining a cause of action in state court might disarrange the federal regulatory scheme. This case, rather, involves the power of a State to confer on its citizens the right to invoke the jurisdiction of the state courts to sue the State itself, concerning the State's administration of vast expanses of land that were granted to it by Congress for the maintenance of the state government and the ultimate benefit of its citizens. Respondents' suit does not intrude upon any active and pervasive regulatory scheme of the Federal Government, which has no continuing jurisdiction over the more than 100,000,000 acres granted to the State; respondents seek merely to enforce certain requirements that were imposed directly on the State by the Statehood Act itself. It would be ironic indeed if the Statehood Act, whose very purpose was to accord sovereign status to the newly admitted State, were construed implicitly to withdraw from the State so central a sovereign prerogative as the power to permit its citizens to petition their government, through its courts,[14] for redress of grievances concerning an entire subject matter of such importance to the State and its people.[15]

Petitioners point to no evidence that Congress intended that extraordinary result. Moreover, the courts of a number of States have entertained suits by taxpayers and other alleging

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[14] Cf. *Bill Johnson's Restaurants, Inc.* v. *NLRB,* 461 U.S. 731, 741 (1983); *California Motor Transport Co.* v. *Trucking Unlimited,* 404 U.S. 508, 510 (1972).

[15] The Supreme Court of Alaska similarly observed that "[i]t would be unusal in the extreme if a state court could not construe the meaning of its state's Statehood Act" (Pet. App. B31).

that actions by state officials with respect to lands granted by a statehood act are inconsistent with the statehood act. See, *e.g.*, *Springfield Township* v. *Quick*, 63 U.S. (22 How.) 56 (1860) (plaintiff township's citizens were beneficiaries of school land grant); *Kadish* v. *Arizona State Land Dep't*, 747 P.2d 1183 (Ariz. 1987) (taxpayer plaintiffs); *Merkwan* v. *State by and through Janklow*, 375 N.W.2d 624 (S.D. 1985) (taxpayer); *Kanaly* v. *State by and through Janklow*, 368 N.W.2d 819 (S.D. 1985) (taxpayers and citizens); *County of Skamania* v. *State*, 102 Wash. 2d 127, 685 P.2d 576 (1984) (county beneficiary of school land grant); *Oklahoma Education Ass'n* v. *Nigh*, 642 P.2d 230 (Okla. 1982) (education association); *State ex rel. Hughes* v. *State Board of Land Commissioners*, 137 Mont. 510, 515-519, 521-523, 353 P.2d 331, 335-336, 338 (1960) (apparently a citizen); *Toomey* v. *State Board of Land Commissioners*, 106 Mont. 547, 559-563, 81 P.2d 407, 413-415 (1938) (taxpayer); *State ex rel. Ebke* v. *Board of Educational Land & Funds*, 154 Neb. 244, 47 N.W.2d 520 (1951) (disappointed lease applicant); *Ross* v. *Trustees of University of Wyoming*, 30 Wyo. 433, 222 P. 3 (1924) (university that was beneficiary of school land grant).

Contrary to petitioners' contention (87-206 Pet. 19, 26-30), there is no reason to believe that Congress intended a different and unique rule in Alaska simply because Section 6(i) authorizes the Attorney General of the United States to bring an action for forfeiture of any lands or minerals that are disposed of contrary to Section 6(i). Petitioners cite no legislative history suggesting that this authorization was intended to preclude other litigation, in state court, concerning the meaning of Section 6(i).[16] It is, in

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[16] The potential breadth of petitioners' preclusion argument is unclear. For example, in a suit under a state equivalent of the Administrative Procedure Act (5 U.S.C. (& Supp. IV) 701 *et seq.*), a disappointed applicant might wish to challenge the state agency's award of a mining permit or lease to another applicant on the ground that it failed to comply with state standards as well as Section 6(i); could Congress have meant to foreclose the state court from considering the federal issue in the action for judicial review? If land was mistakenly conveyed to a private party without reservation of mineral interests to the State, would the Attorney General of Alaska be barred from bringing an action in state court to cancel the patent on the ground that it was void under Section 6(i)? Would the state courts be barred from entertaining a quiet title action between private parties where the issue of ownership turned on a construction of Section 6(i)?

fact, most unlikely that Congress intended to divest the state courts of their authority to guide the State in the performance of its trust responsibilities (cf. *United States* v. *Mason*, 412 U.S. 391, 399 (1973)) and instead to vest the Attorney General of the United States with the exclusive (and paternalistic) responsibility to oversee all aspects of the State's performance.

Nor does private litigation—and especially a declaratory judgment action—interfere with the Attorney General's enforcement authority under Section 6(i), any more than the opinions of the Attorney General of Alaska in 1981 and 1982 construing Section 6(i) interfered with that authority. Forfeiture under Section 6(i) obviously was intended as an ultimate sanction to protect the interests of the United States if the restrictions it imposed are violated; respondents, by contrast, seek to prevent a violation of those restrictions from occurring and thereby to avoid any occasion for forfeiture, so that the land may be preserved for the State and its citizens, as Congress intended (Pet. App. B25-B26). The Attorney General does not have the resources necessary to monitor the administration and disposition of the millions of acres of land that were granted to the States. Suits by private parties and beneficiaries of the trusts can furnish an important means for ensuring that the limitations imposed by Congress are respected. Compare *Cannon* v. *University of Chicago*, 441 U.S. at 687-688 n.8, 704-708 (discussing the relationship between private suits to enforce anti-discrimination provisions and fund-termination actions by federal agencies).[17]

In addition, in the Arizona-New Mexico Enabling Act, which was the last statehood act passed by Congress prior to the Alaska Statehood Act, Congress authorized the Attorney General to bring any action (not merely one seeking forfeiture) to enforce its provisions and expressly provided that nothing in the Act "shall be taken as in limitation of the power of the state

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[17] For similar reasons, there is no reason to believe that Congress would have wanted the federal courts to have exclusive jurisdiction over suits under Section 6(i). See 87-205 Pet. 10-11, citing *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473 (1981). As this case demonstrates, state courts are not inhospitable to federal claims under Section 6(i), and there is no distinct need for uniformity or for the expertise of federal judges. See 453 U.S. at 483-484.

or of any citizens thereof to enforce the provisions of this Act" (§ 28, 36 Stat. 575). This provision sanctions the availability of whatever remedies might be afforded outside the Enabling Act; it does not confer a right directly under that Act, as Alaska contends (87-206 Pet. 26 n.7). There is no reason to believe that Congress intended to treat the State and citizens of Alaska any differently, by foreclosing a right action that would otherwise be available in the courts of Alaska concerning lands granted by the Alaska Statehood Act.[18]

3. In addition to arguing that the state courts were without authority to entertain this suit, petitioners also contend (87-206 Pet. 33-38; 87-205 Pet. 12-13) that the Alaska Supreme Court erred in holding that the State's hard-rock mining laws do not satisfy the "lease" requirement in Section 6(i) because they do not provide for payment of cash rental fees or royalties to the State. In our view, however, the Alaska Supreme Court's unanimous ruling on this issue is correct, and indeed petitioners offer virtually no rebuttal to that Court's extensive analysis. For this reason, and because the ruling below does not conflict with the decision of any other state or federal court, review on this issue is not warranted.

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[18] The State relies (87-206 Pet. 21-22) on a passage in *Mills County* v. *Railroad Cos.*, 107 U.S. 557 (1883), that discussed the requirement in the Swamplands Act that the proceeds of the States' sales be used for reclamation of such lands; the Court stated that whether that condition was faithfully performed was "a question between the United States and the States, and is neither a trust following the lands, nor a duty which private parties can enforce as against the State" (107 U.S. at 566). *Mills County* did not purport to lay down a general rule that all statutory grants to the States are unenforceable in suits by private parties; the decision turned in part on the Court's conclusion that the particular grant there at issue committed expenditures largely to the State's discretion, as evidenced by the directive to use the funds for reclamation "as far as necessary." See *Hagar* v. *Reclamation Dist. No. 108*, 111 U.S. 701, 713 (1884). Here, in contrast to *Mills County*, the "lease" requirement in Section 6(i) is not discretionary, and the grant of 103,000,000 acres to Alaska pursuant to the Statehood Act did create a relationship in the nature of a trust. In addition, the state courts in this case have so far awarded only declaratory relief; they have not yet actually "enforced" Section 6(i) by granting injunctive relief. Finally, *Mills County* arose prior to Congress's express recognition of private suits to "enforce" restrictions on federal grants to the States when it enacted the Arizona-New Mexico Enabling Act in 1910.

a. Use of the term "lease" in Section 6(i) itself suggests a requirement that the State realize at least some revenue, because "[t]he legal understanding of a lease for years is, a contract for the possession and profits of land for a determinate period, with the recompense of rent." *United States* v. *Gratiot*, 39 U.S. (14 Pet.) 526, 538 (1840). This interpretation of Section 6(i) is reinforced by the various factors identified by the Alaska Supreme Court: (1) the legislative history demonstrating that Section 6(i) was intended to assure financial support for the State (Pet. App. B51-B67); (2) the parallel drawn in the legislative history between the "lease" requirement in Section 6(i) and the Mineral Lands Leasing Act of 1920, which requires payment of both rentals and royalties (Pet. App. B64-B65 & n.27)[19]; (3) the patterning of Section 6(i) after the 1927 School Lands Act, which expressly contemplates that the States will realize "proceeds and rents and royalties" from the leasing of mineral lands (43 U.S.C. 870(b); see Pet. App. B29-B30, B39-B43, B63-B64); and (4) the fact that Section 6(i) was intended to put Alaska on a par with other western States, which uniformly require the payment of rents and/or royalties (see Pet. App. B63 n.25, B65-B66, quoting 3 *American Law of Mining* § 63.05[4][d] (Rocky Mtn. Min. L. Inst. 2d ed. 1987)).[20]

b. In addition, the history of the State's hard-rock mining laws (see pages 2-7, *supra*) demonstrates that they were not enacted with a view toward complying with the basic requirements of the "lease" provision in Section 6(i). Congress deliberately declined to authorize mining under a mineral location system, as petitioner AMA and many delegates to the Alaska Constitutional Convention had urged. See pages 4-6, *supra;* Pet. App. B34-B36 & n.16, B39-B54. Nonetheless, the Alaska Legislature enacted the State's hard-rock mining laws in 1959 as a mineral location system, not a mineral leasing system.

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[19] See also *1957 Hearings, supra* note 2, at 222-223 (witness for petitioner AMA acknowledges that under the "mandatory leasing" provisions of Section 6(i), a lease "would be probably on a royalty basis").

[20] See, *e.g.*, Ariz. Rev. Stat. Ann. § 27-234 (Supp. 1987); Colo. Rev. Stat. § 36-1-113 (Supp. 1987); Idaho Code § 47-704 (Supp. 1987); Mont. Code Ann. §§ 77-3-115, 77-3-116 (1988); Nev. Rev. Stat. § 322.030 (1985); N.M. Stat. Ann. §§ 19-8-21, 19-8-22 (1985); Utah Code Ann. § 65-1-18 (1986).

And the Legislature followed that course not on the premise that a location scheme complied with Section 6(i), but on the premise that the "lease" requirement in Section 6(i) was inapplicable, except in those limited instances in which selected lands were subsequently sold (for which the Legislature authorized a special leasing scheme) See pages 6-7, *supra.*

The Attorney General of Alaska concluded in 1981 that the State's original interpretation of the "lease" requirement in Section 6(i) was incorrect and that it applies to all mineral lands selected by the State. See page 7, *supra.* It is that Attorney General's opinion, not the decision of the Alaska Supreme Court in this case, that unsettled whatever expectations mining interests and others in Alaska might have had. Yet the State Legislature accepted that interpretation when it amended the State's hard-rock mining laws in 1981, and that interpretation is not at issue here. The 1981 amendments now do provide for mineral "leases" on all selected lands that were known to be mineral in character when they were selected by the State; but those amendments have never been invoked, because the State has never made the requisite formal finding that any particular tract was known to be mineral in character when it was selected. See pages 7-8, *supra.* Moreover, the Alaska Supreme Court concluded in this case that any leases issued under those provisions would be "in substance indistinguishable from state mining locations" (Pet. App. B70-B71 (footnote omitted)), because the right to lease is conditioned upon a mining location, because no royalties are charged for the extraction of minerals, and because the annual rent is set at the amount of labor required to maintain a mining location for the same claim (*id.* at B68-B70). Thus, the holding below rests in large part on the Alaska Supreme Court's determination that the State Legislature intended to and did enact what is fundamentally a mineral location system for hard-rock minerals—the very approach Congress rejected when it enacted Section 6(i). We have no reason to disagree with this assessment by the Alaska Supreme Court of the Alaska Legislature's actions.

c. Petitioners rely on a statement in a 1955 memorandum prepared by a Mr. Slaughter of the Solicitor's Office in the Department of the Interior on the then-pending statehood bill

(see Pet. App. C1-C11), which stated that what is now Section 6(i) " 'does not attempt to prescribe maximum or minimum rates of royalty' " and that it " 'leave[s] the terms of leasing wholly to the discretion of the state legislature' " (87-206 Pet. 35-36, quoting Pet. App. C15). Based on this passage, the State argues (87-206 Pet. 36) that there are no restraints on the Alaska Legislature in fashioning laws governing the disposition of minerals (beyond the prohibition against issuing a patent for the minerals). The Alaska Supreme Court correctly rejected a broad reading of the Slaughter memorandum that would suggest that the State need not collect *any* rents or royalties—especially since the memorandum also states that " 'Alaska should not be accorded greater freedom in the administration of mineral lands than that accorded existing States having Congressional land grants' " (Pet. App. B69 n.29, quoting *id.* at C5; see also *id.* at C10): other States are governed by the 1927 School Lands Act, which expressly contemplates the receipt of proceeds and rents and royalties from mineral leasing. See page 25 and note 20, *supra*.[21] The Alaska Supreme Court also reasonably concluded that a mining claimant's performance of $200 worth of labor annually to maintain his mining claim does not satisfy the requirement under Section 6(i) that the State receive at least some rents or royalties from mineral leasing. As the Alaska Supreme Court observed, annual labor is required under mineral location laws "to ensure that the claim is worked so that the miner does not locate numerous claims and obtain the right to exclude others"; it "is not a source of revenue to the landowner" (Pet. App. B70, citing *Chambers* v. *Harrington*, 111 U.S. 350, 353 (1884)).

d. Neither the Alaska Supreme Court nor the Superior Court on remand prescribed a specific amount of rents or royalties that must be paid pursuant to a lease under Section 6(i). They properly left determination of the amount to the Alaska Legislature in the first instance, now that Alaska's Supreme Court has disabused its Legislature of the notion that Section 6(i) permits the State to retain a statutory scheme that

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[21] Moreover, under this interpretation, Alaska presumably would be free, as a matter of federal law, to dispense with the payment of rents and royalties for the extraction of oil and gas from the substantial reserves underlying lands granted to the State by the Statehood Act.

is, in substance, a mineral location system, rather than a true "lease" system. Resolution of any questions concerning the permissible contours of a true "lease" system under Section 6(i) should await future amendments by the Alaska Legislature.

4. There is considerable force to respondents' contention in their cross-petition (87-371 Cross-Pet. 9-20) that the Alaska Supreme Court erred in holding that Section 6(i) applies only to lands that were known to be mineral in character when they were selected by Alaska (Pet. App. B71-B84). Section 6(i) states that "[a]ll grants" made by the Act "shall include mineral deposits"; that the grants under Section 6(a) or (b) are made on the condition that all dispositions shall be subject to a reservation of mineral interests to the State; and that "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." There is no indication that this all-inclusive language was intended to apply only to those lands whose mineral character was known when they were selected. To the contrary, as respondents point out (87-371 Cross Pet. 16-17), a provision that would have required the mineral character of the land to be determined when the patent issued to the State was deleted by the House Committee. See Pet. App. B79-B82. Moreover, the underlying purpose of Section 6(i)—to furnish a substantial financial base for the State—suggests that its all-inclusive language means what it says.

Despite the reference in the first sentence of Section 6(i) to the inclusion of mineral deposits in "[a]ll grants," the Alaska Supreme Court held that deposits *unknown* at the time of selection were not covered by Section 6(i) and instead were included in the grants of land made by Section 6(a) or (b). The Court reasoned that lands that were not known to be mineral in character were included in the original grants of school sections to other States and that the purpose of the 1927 Act, on which Section 6(i) was based, was only to include known mineral lands in those grants. See Pet. App. B43-B45, B72-B76. In those other States, however, the exclusion from the 1927 Act of lands whose mineral character was not known at the time of statehood did not reflect a decision by Congress to exempt the mineral deposits in such lands from *all* restrictions on their use and disposition. Lands whose mineral character was unknown at the time of statehood were not covered by the 1927 Act because

they were *already* part of the original grant of school lands made by the relevant statehood Act itself (cf. *United States* v. *Wyoming*, 255 U.S. 489, 500-501 (1921); *United States* v. *Sweet*, 245 U.S. 563, 572-573 (1918)); for this reason, any mineral deposits that were later discovered in such lands while they remained in state ownership presumably were *already* subject to the requirements in the relevant statehood Act that the lands be held in trust and be disposed of for school purposes. By contrast, the Alaska Supreme Court's decision limiting the reach of Section 6(i) appears to have the effect of excluding mineral deposits in lands whose mineral character was not known at the time of selection from *all* restrictions, and of allowing the States to give away the hard-rock minerals in such lands—unless Section 6(a) or (b) of the Statehood Act also imposes a trust obligation on the State to exact some rental or royalty payments for the extraction of minerals from lands selected by the State pursuant to those provisions.

Of course, even if the application of Section 6(i) does not turn solely on knowledge concerning the mineral character of particular land at the time it was selected (or the patent was issued (see Pet. App. B84 n.33)), the State might be free to classify land definitively as either mineral or non-mineral at a later date, such as immediately prior to a proposed sale or lease. But it does not necessarily follow that Section 6(i) should be construed to exclude lands in which mineral deposits are discovered by a mining claimant prior to such a formal classification and prior to any sale, lease or other disposition by the State, simply because those deposits were not identified at the time the lands were selected by or patented to the State, perhaps many decades earlier.

We do not propose here a definitive view of the proper interpretation of Section 6(i) in this regard. Respondents have filed their cross-petition on a conditional basis, urging that it be granted only if the Court grants the principal petitions filed by the State and the Alaska Miners Association. See 87-371 Cross Pet. 9-10; Trustees Br. in Opp. 10 n.3. Because we believe that the principal petitions should be denied, we submit that the cross-petition should be denied as well (see this Court's Rule 20.5). That course would permit the Alaska Legislature to address the issues raised by the cross-petition when it considers

whatever amendments to the State's mining laws it believes are required by the Alaska Supreme Court's decision on the other issues in the case.

CONCLUSION

The petitions and cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1988

APPENDIX

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Case Civ. No. 3AN-83-9862

TRUSTEES FOR ALASKA; NUNAM KITLUTSISTI; DINYEA CORPORATION; VILLAGE OF MINTO; ALASKA INDEPENDENT FISHERMEN'S MARKETING ASSOCIATION; ALASKA CENTER FOR THE ENVIRONMENT; SOUTHEAST ALASKA CONSERVATION COUNCIL; FRIENDS OF THE EARTH, PLAINTIFFS

vs.

STATE OF ALASKA; ALASKA DEPARTMENT OF NATURAL RESOURCES, ESTHER WUNNICKE, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, DEFENDANTS

ALASKA MINERS ASSOCIATION, FAIRBANKS NORTH STAR BOROUGH, JOSEPH VOGLER, DEFENDANTS–INTERVENORS

ORDER

1. *Procedural Background*

The issues presented in this action were originally addressed by this Court through rulings on cross-motions for summary judgment. Such rulings were then appealed to the Alaska Supreme Court, which reversed this court's rulings, and held that the parties had standing to litigate the issues herein, that the state's mineral leasing system violated Section 6(i) of the Statehood Act insofar as it did not require miners to pay "rents or royalties" on mining leases, and that the Section 6(i) restrictions applied only to those lands known to have been mineral in character at the time the lands were selected by the state. *Trustees for Alaska v. State,* 736 P.2d 324 (Alaska 1987). The Alaska Supreme Court then remanded this action to this Court with the express direction to "enter a declaration in

accordance with [its] opinion and for such other and further proceedings as may be appropriate." *Id.* at 342.

Pursuant to such remand, and on May 24, 1987, this Court ordered plaintiffs Trustees for Alaska to submit a proposed order and declaratory judgment form consistent with the Alaska Supreme Court's aforementioned decision. Plaintiffs submitted such proposed order on July 10, 1987, and thereafter, defendant State and defendant-intervenors Alaska Miners Association opposed the order, objecting to specific portions thereof.

Meanwhile, defendant State and defendant-intervenor sought further appellate review of the Alaska Supreme Court's decision by filing petitions for writs of certiorari with the United States Supreme Court. Plaintiff Trustees subsequently filed a cross-petition for a writ of certiorari. The parties' various petitions are still pending at this time.

Given the pending petitions before the United States Supreme Court, defendant and defendant-intervenor filed a Motion to Suspend Proceedings with this Court on September 11, 1987, essentially seeking a stay of further proceedings before this Court until such time as the United States Supreme Court acted upon the pending petitions.

Arguments on plaintiffs' proposed declaratory judgment form and order, and defendants' Motion to Suspend Proceedings were heard by this Court on October 28, 1987. In the instant order, the Court rules on the parties' objections, arguments and motion as set forth below.

2. ***Defendants' Motion to Suspend Proceedings.***

Defendants' motion is denied.

This court interprets the Alaska Supreme Court's instructions on remand to be a direct order from the appellate court to the lower court to take certain action. Thus construed, this Court concludes that it has no discretion to refrain from following the appellate court's direction, and that it is obliged to attempt to implement, in good faith, the order of the higher court. Accordingly, this Court has held "such other and further proceedings" on plaintiffs' proposed order and declaratory judgment form,

and defendants' objections thereto, and has issued a declaratory judgment which the Court believes to be consistent with the Alaska Supreme Courts' decision in this case. In this Court's view, any request by any party to stay or "suspend" the implementation of the Alaska Supreme Court's decision, pending action by the United States Supreme Court on the parties' petitions for writs of certiorari, should be addressed to the Alaska Supreme Court.

3. ***Proposed Declaratory Judgment Form and Injunction.***

The Court has issued a revised version of plaintiffs' proposed declaratory judgment form. The parties' objections, and the Court's revisions, are addressed separately below.

a. "*Rents or Royalties*"

Plaintiffs' proposed declaratory judgment contains the language "rents *and* royalties." Plaintiffs argue such language reflects the essence of the Alaska Supreme Court's holding, and that the Court intended that the State is not free to adopt one form of compensation to the exclusion of the other. Defendants contend that the Alaska Supreme Court used the language "rents *or* royalties" with precision in its appellate decision, and that the Court is, in effect, giving defendant State the discretion to fashion whatever compensation system it deems appropriate.

This Court agrees with defendants' interpretation of the Alaska Supreme Court's decision. In its opinion, the Alaska Supreme Court discusses "the leasing systems of other states", noting that they differ from the federal leasing system but that they are "uniform in requiring the payment of rent, *or* royalties, *or* both." *Id.* at 338. (Emphasis added). The Supreme Court went on to acknowledge and discuss that such state leasing systems can be categorized into two types: one which requires the payment of both rents and royalities, but which credits the former against the latter or which ceases rent payments when the payment of royalties begins; and the second which separately requires the payment of *both* rents and royalties, independent of one another. *Id.* In construing Section 6(i) of the Statehood Act, the Court considered such differing mineral leasing systems

of other states and concluded that Section 6(i) "mandates a system under which the states must receive rent *or* royalties for its mineral leases." *Id.* (Emphasis added). This Court concludes that, in using such language, the Alaska Supreme Court intended to give the State the flexibility to fashion whichever leasing system it chose—whether allowing the crediting of rents against royalties or requiring the payment of both rents and royalties. The only thing which the State is *not* free to do, however, is to adopt a system which charges *no* rents or royalties for the extraction of minerals from state mineral lands. *Id.* at 338 n. 29.

In this Court's view, the Alaska Supreme Court carefully chose, and intended to use, the precise language "rents or royalties." Accordingly, this Court has used such language in the declaratory judgment issued herewith.

b. "*Fair Market Value*"

Plaintiffs' proposed declaratory judgment form suggests, and defendants object thereto, that the leasing system adopted by defendant State must charge rents or royalties reflective of the "fair market value of the hardrock mineral resources" of the State.

As noted above, this Court interprets the Alaska Supreme Court's decision in this case as recognizing that the State has substantial flexibility and discretion in fashioning some appropriate leasing system requiring the payment of "rents or royalties" for the extraction of minerals. The Alaska Supreme Court did not mandate that a particular valuation approach must be used by the State in setting such "rents or royalties." Rather, the only requirement imposed upon the State, by the Alaska Supreme Court as this Court interprets the appellate decision, was that the State has to charge *some* rents or royalties for extracted minerals, i.e., that the State was not free to impose *no* such charges on miners extracting minerals from state mineral lands. Accordingly, this Court has declined to incorporate any particular valuation standard or requirement, such as the proposed "fair market value" requirement of plaintiffs' proposed order, into its declaratory judgment.

c. *Determination of Mineral Character of State Lands*

Defendants object to that portion of plaintiffs' proposed declaratory judgment form which refers to "all state lands" as well as "hardrock" mineral resources.

As this Court interprets the Alaska Supreme Court's decision, the appellate court specifically considered, and rejected, the argument that the leasing system should apply to "all lands" where mineral are found. *Id.* at 341. Rather, the Supreme Court concluded that the restrictions of Section 6(i) "were intended to apply only to lands whose mineral character was known at the time of selection." *Id.* Further, the Court characterized such mineral resources as "mineral deposits." *Id.* at 339. Finally, the Court acknowledged that the "all lands" test might avoid "administrative problems" in determining the mineral character of land at the time of selection, but nevertheless rejected such test in its final holding on this issue.

This Court, therefore, has substituted the terms "lands whose mineral character was known at the time of selection" for "all state lands", and "mineral deposits" for "hardrock mineral resources" in plaintiffs' proposed judgment form. Similarly, the Court has declined to specify any particular methodology or process for the identification of such lands, or any definition of "mineral deposits', but instead defers to the State and/or the legislature in this respect.

d. *Injunction*

Plaintiffs' proposed declaratory judgment and order contain a prospective injunction, which would enjoin the State from allowing the extraction of mineral deposits from appropriate state lands after May 15, 1988, *if* a leasing system conforming to the Supreme Court's interpretation of Section 6(i) has not been adopted or enacted. Defendants contend that no injunction should issue since no imminent harm is about to occur. Defendants argue that mining activity realistically is not conducted during the winter months, that the issuance of an injunction would be premature at this point, and that the Alaska Legislature

should be given an opportunity to enact an appropriate leasing system during the next legislative session.

The Court agrees with defendants that the issuance of any injunction at this time would be premature and inappropriate. The Court thus declines to issue any injunctive relief in connection with the instant declaratory judgment. Should the State and/or Legislature fail to adopt an appropriate leasing system by the time the next mining season is about to commence, any party is free to return to this Court with a proper application for injunctive relief at such time.

4. ***Attorneys' Fees.***

Insofar as this litigation is a "public interest litigation", and plaintiffs are "public interest litigants", the Court will allow an award of full, reasonable attorneys' fees and costs to plaintiffs regarding this litigation. Plaintiffs shall submit their application for fees and costs, along with detailed supporting documentation, pursuant to Rules 82 and 79. All parties will have an opportunity to brief such isues in accordance with applicable Civil Rules.

Dated this 9 day of November, 1987.

/s/ DOUGLAS J. SERDAHELY
Douglas J. Serdahely

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Case Civ. No. 3AN-83-9862

TRUSTEES FOR ALASKA; NUNAM KITLUTSISTI; DINYEA CORPORATION; VILLAGE OF MINTO; ALASKA INDEPENDENT FISHERMAN'S MARKETING ASSOCIATION; ALASKA CENTER FOR THE ENVIRONMENT; SOUTHEAST ALASKA CONSERVATION COUNCIL; FRIENDS OF THE EARTH, PLAINTIFFS

vs.

STATE OF ALASKA; ALASKA DEPARTMENT OF NATURAL RESOURCES, ESTHER WUNNICKE, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, DEFENDANTS

ALASKA MINERS ASSOCIATION, FAIRBANKS NORTH STAR BOROUGH, JOSEPH VOGLER, DEFENDANTS–INTERVENORS

DECLARATORY JUDGMENT

Pursuant to the remand in this action by the Alaska Supreme Court in *Trustees for Alaska v. State,* 736 P.2d 329 (Alaska 1987), this Court has considered the Supreme Court's decision, plaintiffs' proposed declaratory judgment order and defendants' and defendant-intervenors' responses thereto. The Court finds and declares as follows:

1. The State of Alaska's current system allowing the extraction of mineral deposits from state lands, AS 38.05.185 *et seq.*, violates Section 6(i) of the Alaska Statehood Act because it does not require the payment of rents or royalties from state lands whose mineral character was known at the time of state selection.

2. To comply with Section 6(i) of the Alaska Statehood Act, the State's mineral leasing system must include some process for determining which lands were of known mineral character at the time of selection and must further require the payment of rents

or royalties for the extraction of mineral deposits from such lands.

3. Plaintiffs, as successful public interest litigants in this action, are entitled to their full, reasonable attorneys' fees and costs incurred during the litigation of this case. Plaintiffs shall file a proper application for attorneys' fees and costs along with detailed documentation therefor, pursuant to Civil Rules 82 and 79.

DATED this 9th day of November, 1987.

/s/ DOUGLAS J. SERDAHELY
Douglas J. Serdahely
Superior Court Judge

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Supreme Court, U.S.
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CLERK

Nos. 87-206 and 87-371

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1987

STATE OF ALASKA, PETITIONER
v.
TRUSTEES FOR ALASKA, ET AL.

TRUSTEES FOR ALASKA, ET AL.,
CROSS-PETITIONERS
v.
STATE OF ALASKA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALASKA

SUPPLEMENTAL BRIEF FOR STATE OF ALASKA IN RESPONSE TO THE VIEWS OF THE SOLICITOR GENERAL

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This supplemental brief responds to the brief filed by the Solicitor General.

The Solicitor General takes two positions that would improperly allow state courts to avoid federal limitations concerning the enforcement of federal law. First, he asserts that, whereas a federal court may not imply a private cause of action in derogation of an enforcement scheme established by Congress, a state court may. Second, he asserts that this Court has no jurisdiction to consider the petition of a state injured by its state court's misapplication of federal law where the state court plaintiffs alleged no "case" or "controversy." Neither issue is resolved by any holding of this Court, while both are of sufficient importance to call for grant of the petition of the State of Alaska ("Alaska").

The Solicitor General also errs on the merits. Disregarding the opinion of the Solicitor of the Department of the Interior, the Solicitor General incorrectly construes the language of section 6(i) of the Alaska Statehood Act. 1/

1/ See opinion of Solicitor Ralph W. Tarr, dated December 4, 1987, which is reproduced in the Appendix to this brief. In the normal course, Solicitor Tarr's conclusion that the Alaska Legislature's mining laws complied with section 6(i) would be dispositive, since any recommendation in favor of a forfeiture action would originate in Interior. Inexplicably, instead of deferring to Solicitor Tarr and focusing on the broad federalism issues, the Solicitor General fashioned an extensive fact statement to support his opinion about the "reasonableness" of the Alaska Supreme Court's determination of the particular policies at issue. Solicitor General's Brief ("S.G.") 12. In so doing, the Solicitor General erroneously concludes that the terms "rents or royalties, which do not appear in section 6(i), must be implied into the word "lease," while the term "mineral lands," which does appear in section 6(i), must be read out of the statute. Alaska adopts the further arguments on these points made in the supplemental brief of the Alaska Miners Association.

1. State courts cannot ignore federal limitations against implication of causes of action.

The Solicitor General agrees that a private cause of action would not be properly implied in federal court to enforce the "lease" condition placed on the grant of mineral lands to Alaska under section 6(i). S.G.17-18. He nonetheless reaches the conclusion that a state court is free to imply whatever causes of action it wishes. The suggestion that state courts have unrestrained power to imply causes of action under federal laws is supported by neither authority nor reason.

The Solicitor General cites no authority allowing state court implication of private causes of action under federal law in instances where federal courts may not imply a private right. Rather, the Solicitor General string cites cases brought in federal court,

S.G.19 n.12, and suggests, without analysis of the language, holdings, or logic of those cases, that a negative inference should be drawn from the fact that the reported cases have all been brought in federal court. S.G.19. However, at best, these cases prove only that the Court has not been presented with a case involving state court attempts to imply a cause of action under a federal law.

More importantly, the Solicitor General's position is directly contradicted by Davis v. Passman, 442 U.S. 228, 239 (1979), a case he does not cite. There, Justice Brennan wrote that the "cause of action" issue relates to

> which class of litigants may enforce in court legislatively created rights or obligations. If a litigant is an appropriate party to invoke the power of the courts, it is said that he has a "cause of action" under the statute....

(Emphasis added). Davis can be construed neither as permitting a party without power to invoke the authority of federal courts to enforce a federal statute to secure the power by simply filing his case in state court, nor as suggesting that state courts are any more free than federal courts to arrogate to themselves Congressional right-creating powers.

Nor is it adequate answer that a state court would provide a different enforcement remedy than provided by the federal law. Davis says that it is "entirely appropriate for Congress, in creating these rights and obligations, to determine in addition, who may enforce them and in what manner." Id. at 241 (emphasis added). Here, a "textually demonstrable commitment" (id. at 242) of enforcement authority is made, and it is solely to the United States Attorney General in federal court.

Nonetheless, the Solicitor General argues that the instant action should be construed as a state cause of action for relief by citizens of Alaska "injured" 2/ by the state's violation of federal law. S.G.18. This characterization cannot withstand scrutiny.

The Solicitor General's theory is based upon the "general jurisdiction" of the state courts. S.G.18. This theory fails for two reasons. First, as the Solicitor tacitly admits under his "preemption" analysis, it is a federal question whether private parties may seek to enforce a federal law, whether in federal or state court. S.G.21. Second, the Solicitor General must acknowledge on

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2/ This suggestion of injury is at odds with the Solicitor General's acknowledgement that there is no "injury" to the private plaintiffs. S.G.13-16.

the basis of his own brief that even a state court of general jurisdiction may only hear cases "within the legal bounds of rights or remedies," and "except as has been expressly and unequivocally denied ...." S.G.18 n.11, quoting from In re C.D.M., 627 P.2d 607, 610 (Alaska 1981) (emphasis deleted).

The Solicitor General suggests that it is not unusual for a state court to construe a federal law when the federal law pertains to "an element" of the "state-created cause of action." S.G. 19. However, here the Alaska Supreme Court disclaimed any intent to construe section 6(i) in order to decide an "element" of a state law cause of action, but instead stated that it was ruling "directly" upon section 6(i):

> Appellants' state constitutional and public trust theories depend on the meaning of the grant and restrictions of section 6(i). Since section 6(i) directly controls, we have

> no occasion to examine these theories further.

86-206 Petitioner's Appendix ("Pet.App.") B85. Here, unlike in the tort and other cases cited by the Solicitor General (S.G.19-20), there is no independent state cause of action, but an attempt to give private parties a "direct" enforcement action in state court.

The Solicitor General suggests that the "relevant question" is whether a state cause of action is "preempted by the Statehood Act" (S.G.20), and concludes that there was no intent to preclude the right of Alaskans to "petition their government, through its courts, for redress of grievances...." (S.G.21) (emphasis added) (footnote omitted). Even if "preemption" were the relevant question, the Solicitor General has drawn the wrong conclusion. Congress clearly intended to "occupy the field" with regard to enforcement of the section

6(i) lease condition, and private enforcement actions in state court interfere with that scheme. See, International Paper Co. v. Ouellette, ___ U.S. ___, 107 S.Ct. 805, 811-814 (1987).

The Solicitor General's concession that there would be no implied private right of action in federal court is dispositive: federal legislation which excludes private enforcement in federal court, surely preempts any private enforcement in state court.

Solicitor Tarr recognizes the "incompatibility" of state court enforcement actions. He points out, App. 13, that

> [i]n essence, the government's current exercise of prosecutorial discretion will have been preempted by the Alaska Supreme Court, without any participation of the United States.

Confusion would also result, since under the Solicitor General's view any state court decisions will have no res

judicata effect upon federal court consideration of a forfeiture action brought by the Attorney General. S.G.16-17. So far, the state superior court and the Solicitor of the Department of the Interior have concluded that the state laws comply with the leasing condition (Pet.App.A9-A12; App.5-10), while the Alaska Supreme Court and the Solicitor General have concluded otherwise (Pet. App.B51-B71; S.G.24-28). This confusion leaves the Alaska Executive and Legislature in an untenable position. 3/

The Solicitor General misconstrues Alaska as asserting that its courts may

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3/ Would the Solicitor General have concluded that the Alaska Legislature received "useful guidance" (S.G. 16) if the Alaska Supreme Court had ruled that Alaska's laws comply with the section 6(i) conditions? The propriety of state court implication of an enforcement remedy cannot turn on the state court's result on the merits.

not interpret its statehood act, and then string cites cases for the proposition that many state courts have interpreted their statehood acts. S.G.21-27. Alaska agrees that its courts are free to interpret federal law; they just cannot create rights in derogation of that federal law. None of the Solicitor General's string-cited cases present a similar statutory or factual context, and none address whether a private cause of action under federal law is properly created by a state court. 4/

4/ For instance, in Kanaly v. State by and through Janklow, 368 N.W.2d 819 (S.D. 1985), a state constitutional provision "mirrored" the federal enabling act. By contrast, section 6(i) of the Statehood Act is not incorporated into the Alaska Constitution. State of Alaska v. Lewis, 559 P.2d 630, 639 (Alaska 1977), cert. denied 432 U.S. 901 (1977). Also, in Kanaly, as in other cases cited by the Solicitor General, neither the enabling act nor the state constitutional provision contained a "textual commitment"

(footnote continued)

The Solicitor General suggests that it would be "paternalistic" to leave "guidance" of the state solely to the federal government. S.G.23. However, the Solicitor General's views, if given effect, would not remove the "paternalistic" nature of the federal government's enforcement role. Instead, his interpretation would simply authorize an intermeddling "uncle" to provide non-binding, but nonetheless coercive, "guidance." Moreover, in his rush to give deference to the state court, the Solicitor General ignores the fact that section 6(i) expressly calls for deference to Alaska's legislature, not its courts.

(Footnote Continued)
of enforcement authority of the provision at issue.

The Solicitor also states, without any basis, that

> [t]he Attorney General does not have the resources necessary to monitor the administration and disposition of the millions of acres of land that were granted the States. Suits by private parties and beneficiaries of the trusts can furnish an important means for insuring that the limitations imposed by Congress are respected.

S.G.23. These assertions must be rejected for three reasons.

First, the impulse to imply a private cause of action is always based on a claim that it would benefit overall enforcement. That has not prevented this Court from ruling in many particular cases that Congressional enactments do not permit private enforcement.

Second, the absence of a forfeiture suit in the nearly 30 years during which the state's mining laws have remained essentially unchanged is not due, as suggested by the Solicitor General, to

any lack of federal resources, but rather to the judgment that there was, in fact, no violation of the leasing condition. See Solicitor Tarr's Opinion, App.5-10.

Third, no court has held that section 6(i) creates a trust. Section 6(i) contains no trust language that in any way restricts the state's use of the mineral revenues from lands received under the section 6 grants. Moreover, the Solicitor General's attribution of trust beneficiary status in this discussion is at odds with his own contrary characterization in his Article III standing discussion.

The Solicitor General claims that section 28 of the Arizona-New Mexico Enabling Act, 36 Stat. 575, supports the idea that Alaska courts can seek to enforce the Alaska Statehood Act in suits brought by state citizens. S.G.23-24. However, the Arizona-New Mexico Enabling

Act expressly provides that the act does not limit the state and its citizens from enforcing the act. Congress could have provided similarly for the later-admitted states of Alaska and Hawaii, but did not. The Ninth Circuit has ruled that there is no implied private right of action to enforce conditions of the Hawaii Admissions Act. Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission, 588 F.2d 1216 (9th Cir. 1979), cert. den. 444 U.S. 826 (1979). 5/ Moreover, Keaukaha demonstrates that even the express trust provisions in the Hawaii Admission Act permitted no implication of

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5/ See discussion of this and related cases in State of Alaska's Petition Br. at 22-27. Respondent private parties omitted any discussion of these cases in their opposition brief, and the Solicitor General's attempt to avoid these and other controlling cases in footnotes is unpersuasive. See S.G.20 n.13, 24 n.18.

a private cause of action. 588 F.2d at 1218 n.2, 1220.

The Solicitor General's attempt to imply a private cause of action is unsupported by law or logic. At best, he has confirmed that there is an absence of clear precedent as to whether a state court may properly ignore Congressional limitations against the implication of private causes of action under federal laws. This argues in favor of granting review to resolve this important issue.

2. The Court has Article III jurisdiction to consider the petition.

The Solicitor General raises a concern, not previously addressed in this case, with this Court's jurisdiction under Article III of the Constitution. In particular, the Solicitor General suggests that because the private party plaintiffs in state court alleged insufficient injury to raise a "case" or

"controversy," there is no jurisdiction in this Court.

The State of Alaska agrees with the Solicitor General that respondent private parties have no more than generalized grievances about the conduct of government, and therefore would have had no Article III standing to bring a case in federal court. See S.G.14-15. Respondents would also have had no standing to appeal to this Court had the state court upheld the validity of the state mining law. Doremus v. Board of Education, 342 U.S. 429, 435 (1952) ("[T]he appellants cannot obtain a decision from this Court by a feigned issue of taxation.") (Emphasis added.)

The issue which has not been decided by this Court is the converse of that in Doremus: when a state court invalidates a state law based upon the application of a federal law, does the state court

plaintiff's lack of injury disqualify the defendant state, who is injured by the state court judgment, from pursuing its case or controversy in the United States Supreme Court? 6/ The Solicitor General attempts to obscure the issue and its unresolved nature by passing on it in a footnote. S.G.17 n.10. It deserves more scrutiny than that.

The purposes of the constitutional prohibition against hearing cases posing no "case" or "controversy" would be frustrated, rather than served, by denying Alaska Article III standing. The core purpose of the case or controversy

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6/ See Laurence H. Tribe, American Constitutional Law 113-114 and n.20 (2d ed. 1988), P. Bator et al., Hart & Wechsler's The Federal Courts and the Federal System 161, 181 (2d ed. 1973), and Barnes v. Kline, 759 F.2d 21, 63 n.16 (D.C. Cir. 1985)(Bork, J., dissenting) judgment vacated sub nom. Burke v. Barnes, 479 U.S. 361 (1987).

requirement is to insure proper functioning of the separation of powers. Allen v. Wright, 468 U.S. 737, 752 (1984). Due regard must also be made for the division of powers between state and federal governments. It would be ironic if the case or controversy requirement, designed to serve as a check against federal court usurpation of Congressional and federal executive functions, were allowed to be used as a shield behind which state courts could usurp those very same federal functions. 7/ To avoid this

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7/ While disagreeing that the state senators had standing in Coleman v. Miller, 307 U.S. 433, 466 (1939), Justice Frankfurter agreed with the majority that a state officer who is

> obstructed in the performance of his duty under a state statute because his state court found a violation of the United States Constitution may ... ask this court to remove the fetters against enforcement of his duty imposed by the state court because of an asserted misconception

(footnote continued)

ironic result, this Court should find the injury suffered by Alaska under the judgment of its Supreme Court sufficient to create a "case" or "controversy" under the Constitution.

DATED: May 18, 1988.

GRACE BERG SCHAIBLE
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(Footnote Continued)
of the Constitution.
Compare, Chief Justice Hughes's opinion, Id., 307 U.S. at 441, 443, 445. See also Diamond v. Charles, ___U.S.___, 106 S.Ct. 1697, 1703 (1986) ("Had the State of Illinois invoked this Court's appellate jurisdiction ... the "case" or "controversy" requirement would have been met, for a state has standing to defend the constitutionality of its statute.")

United States Department of the Interior

Office of the Solicitor
Washington, D.C. 20240

Dec -4 1987

The Honorable Roger J. Marzulla
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Applications for Certiorari in State of Alaska v. Trustees for Alaska, et al., S.Ct. Nos. 87-205, 87-206 and 87-371

Dear Mr. Marzulla:

We have corresponded with you several times in writing and recently in person, concerning the above petitions and cross-petitions for certiorari. In addition, members of this office have met with four attorneys from your office to discuss the position that the Federal Government should take in response to the Supreme Court's request for the government's views on whether certiorari should

be granted in any of the three petitions presently before the court.

Our previous comments, both written and oral, centered on whether the Trustees for Alaska (Trustees) should properly have been allowed to sue in state court to challenge the validity of Alaska's mineral leasing statutes under section 6(i) of the Alaska Statehood Act (section 6(i)). This question may properly be broken into two separate issues:

1. Whether the state court had jurisdiction to hear this suit; and
2. Whether section 6(i) provides for a private cause of action to enforce its provisions and conditions. (We have previously referred to this issue, somewhat imprecisely as the "standing" issue.)

In addition, the pending petitions raise two further issues:

3. Whether the state's mineral leasing laws in fact violate section 6(i); and

4. Whether the restrictions in section 6(i) apply to all state owned minerals, or only those that were "known mineral lands" at the time the state selected them.

It is my intention in this letter to reiterate my views on the first two questions and to provide you with this Department's position on the latter two questions. To facilitate understanding, issue number 3 above is addressed first. In summary, we concur in all respects with the positions taken by the State of Alaska and the Alaska Miners Association in these petitions. I would appreciate it if these comments and any others we may make after an opportunity to review your draft brief could be forwarded to the Solicitor General with your draft

brief. I understand that your draft brief is due to the Solicitor General on December 9.

Procedural Background

The procedural background is set forth in great detail in the various petitions to the Supreme Court. Suffice it to say that this suit arose as a challenge to the validity of Alaska's mineral leasing statutes under section 6(i), which reads:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter

> disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Note preceding 48 U.S.C. Sec. 21 (1982).

All of the issues presented by the three petitions involve interpretations of various portions of this language.

Whether the Alaska Mineral Leasing Laws Violate Section 6(i).

The Alaska Supreme Court ruled that because the Alaska laws do not exact a monetary rent or royalty from the mining of hardrock minerals, those laws violate section 6(i) and are invalid. We disagree with this holding.

The Alaska mineral laws require cash royalties from the most commercially viable minerals, oil, gas, and coal, while for the "hardrock" varieties of minerals, the state legislature in essence set cash royalty rates at zero

opting instead for an annual labor requirement that does not directly produce revenues for state coffers.

The only requirement imposed upon the State of Alaska in section 6(i) is that it retain title to the mineral estate in mineral lands selected under the Alaska Statehood Act. The Trustees argue and the Alaska Supreme Court found that a second requirement is imposed upon the State of Alaska. This alleged secondary requirement mandates that the state obtain monetary value for hardrock minerals as well as fluid minerals and coal. The basis for this additional alleged requirement is the sentence in section 6(i) which reads: "Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct. . . ." The Alaska Supreme Court adopted the view that the reference to leasing meant that

the state should receive monetary value from all mining of state lands.

The court's reading of the reference to leasing ignores the last clause of the sentence which reads, "as the State legislature may direct." This clause provides the Alaska legislature with broad discretion in the establishment of its leasing program. The Alaska legislature decided to set the cash rental value for hardrock minerals at zero. Instead, the Alaska legislature set the lease rental for hardrock minerals at "not less than the value of annual labor improvements required for mining claims" and allows the annual labor improvement (minimum $200) to be credited against the rent. AS 38.05.205, .210. We do not perceive any impropriety in these legislative actions.

It is true that Congress intended the leasing system to generate income for

the new state. It is also true that one way in which this objective was achieved was through keeping the subsurface estate in mineral lands in state ownership. While it is undeniable that Congress chose the leasing alternative out of concern for the financial well-being of the fledgling state, it is equally undeniable that Congress left the amount of royalties to be collected from the state's leasing program to the discretion of the state legislature and did not provide any definition or framework of reference establishing a clear intent as the meaning of the term "lease." The only clear statement from Congress on this issue was the deferral of discretion to the state legislature. We submit that the Alaska Supreme Court's holding is incorrect, because the state legislature acted within its discretion under section 6(i).

A major concern at statehood, expressed both in Congress and in the territorial legislature, centered on provisions in the 1872 Mining Law that allowed patenting of the land, including the mineral estate, to a mining claimant. Such patenting deprives the United States of title to all minerals in the subsurface of the claimed area, not just to those minerals found to be valuable.

The construction of section 6(i) also demonstrates that the leasing reference was not intended as a separate requirement. The sentence in section 6(i) containing the leasing requirement immediately follows and is juxtaposed with a sentence that prohibits the state from disposing of the mineral estate in its mineral lands. The first sentence says what the state may not do -- alienate title to the mineral estate. The next sentence says what the state may do

-- lease as the state legislature may direct. Considering the severity of the penalty provisions calling for forfeiture, the simple word "lease" should not be read to have imposed additional requirements on the State of Alaska beyond the clear non-alienation requirement.

State Court Jurisdiction and Private Attorney General Standing

The remedy and jurisdiction provided in section 6(i) preclude both concurrent state court jurisdiction and private enforcement from occurring. Section 6(i) explicitly sets forth the forfeiture remedy for violations of its provisions, the party who shall bring such an action and the court in which such an action shall be brought. Its language is clear and unambiguous. If minerals are disposed of contrary to its provisions, then the Attorney General (of the United States) shall institute proceedings to

declare the lands or minerals so disposed of forfeited to the United States. Furthermore, such an action must be brought in U.S. District Court for the District of Alaska.

This Department concurs fully with the arguments presented in pages 6-11 of the petition for certiorari filed by the Alaska Miners Association concerning the issues of standing to sue as private attorney general and concurrent state court jurisdiction. These arguments are summarized below.

The United States Supreme Court has established a presumption that state courts have concurrent jurisdiction to adjudicate enforcement of federal statutes, except where Congress has demonstrated a contrary intent. Such intent may be evidenced by a clear incompatibility between state court

jurisdiction and the federal interests at stake.

The facts before the court demonstrate such incompatibility. As noted above, we disagree with the Alaska Supreme Court ruling that the Alaska mineral leasing statutes violate section 6(i). Any judicial determination of whether a violation exists should be made by the Federal District Court for the District of Alaska at such time as an enforcement action is instituted by the Attorney General. In the present circumstances this Department has not requested the Attorney General to institute such an action. If the Alaska Supreme Court proceeding is deemed appropriate under the Alaska Statehood Act and that court's decision in this case is allowed to stand, the determination of the United States government that the Alaska statutory scheme is appropriate will be given

no force and effect. In essence, the government's current exercise of prosecutorial discretion not to institute proceedings will have been preempted by the Alaska Supreme Court, without any participation of the United States.

This fact comes into sharp focus when coupled with the reality that if the appealed Alaska ruling is allowed to stand, the Attorney General would be subject to an action in mandamus to enforce the forfeiture provisions. If the mandamus action were successful, the state court ruling would have preempted federal prosecutorial discretion and violated the clear directive in section 6(i).

It is logically inconsistent to argue that a state law could violate section 6(i) without triggering the forfeiture requirement imposed by section 6(i) on the Attorney General. Yet the

facts in this case present this very dilemma. The plaintiff Trustees who charge Alaska with violating section 6(i) cannot bring the forfeiture action. Congress reposited both functions in the same entity in order to avoid such an incongruous result.

The Trustees' efforts to institute a private cause of action conflict with the federal responsibility to enforce the forfeiture provisions of section 6(i). Consequently, the jurisdiction of the Federal District Court for the District of Alaska over actions challenging the validity of state law under section 6(i) must be considered exclusive.

In cases where Congress has created only public means of enforcing a federal statute, such as section 6(i), there is a presumption that there is no private cause of action absent a clear showing of congressional intent to permit private

enforcement. The record in this case is devoid of any indication that Congress intended to permit any enforcement other than that explicitly provided in section 6(i): a forfeiture action brought by the U.S. Attorney General. The incompatibility described above also supports our conclusion that Congress did not intend to allow for private enforcement of the conditions of section 6(i).

Since the law under which the Alaska mineral leasing laws must be reviewed contains a remedy and forum exclusive of the Trustees and the Alaska state courts, not only did Trustees for Alaska not have standing to bring this suit, the Alaska state courts did not have jurisdiction to hear it.

Whether the Section 6(i) Restrictions Apply to All State Minerals or Only to Those Mineral Lands That Were Known at the Time of Selection

The Trustees have filed a cross-petition for certiorari on the issue of

whether the section 6(i) restrictions apply to all state owned minerals or only to those lands that were known to be valuable for minerals at the time of selection. The Alaska Supreme Court held in favor of the latter proposition. We concur with the state court on this issue.

On its face, section 6(i) states that the non-alienation requirement applies only to "mineral lands:"

> The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the minerals in the lands....

(Emphasis added.)

The use of the words "mineral lands" was an intentional choice of a term of art long understood in the lower 48 states as referring only to lands known

to be valuable for minerals at the time title passes to the state. United States v. Sweet, 245 U.S. 563 (1918). The state supreme court's discussion of the background of this term and its knowing use in light of the legislative history of the Alaska Statehood Act comports fully with our views. The intent of Congress was to put Alaska in roughly the same position as other public land states.

Other states did not receive title to lands known to be valuable for minerals until Congress specifically extended the land grants to include "mineral lands" in 1927. When Congress so extended the grants, it imposed a condition on all such lands that the states receiving them could only lease minerals therein, and could not alienate title to the minerals.

43 U.S.C. Sec. 870(b). Lands previously granted on which minerals were

later discovered, however, are not subject to this restriction. Congress intended the same result for Alaska and its use of the term "mineral lands" in section 6(i) accomplished that result. We see no merit in the Trustees' cross-petition.

Conclusion

We fully support the petitions for certiorari filed by the State of Alaska and the Alaska Miners Association. We do not support the petition filed by Trustees for Alaska.

If you have any questions or comments concerning any of the above, please contact Scott Loveless of this office at 343-4444. Thank you for your continued cooperation.

Sincerely,

/s/

Ralph W. Tarr
Solicitor

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Nos. 87-205, 87-206 and 87-371

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALASKA MINERS ASSOCIATION, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

STATE OF ALASKA, PETITIONER

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SUPPLEMENTAL BRIEF FOR ALASKA MINERS ASSOCIATION IN RESPONSE TO THE VIEWS OF THE SOLICITOR GENERAL

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By way of this Supplemental Brief the Alaska Miners Association, Petitioner in No. 87-205, submits its response to the Brief submitted by the Solicitor General for the United States as Amicus Curiae. The Solicitor General asserts the following:

1. This Court does not have jurisdiction to entertain the petitions or cross-petition for writ of certiorari because respondents do not satisfy the standing requirement of Article III of the U.S. Constitution.

2. The Supreme Court of Alaska correctly held that Section 6(i) of the Alaska Statehood Act does not preclude Alaska courts from entertaining a private action seeking declaratory judgment on the validity of the State's mining laws.

3. The Alaska Supreme Court was correct in holding that:

a. the State's mining law is not a leasing system;

b. the "lease" provision in Section 6(i) requires the payment of at least some rents or royalties for the extraction of minerals; and

c. the State's mining laws fail to require such payment.

4. The Alaska Supreme Court erred in limiting the lease requirement in Section 6(i) to lands that were known to be mineral in character when they were selected by the State.

The following discussion analyzes each assertion.

I

The existence of a question about whether this Court has jurisdiction to entertain the petitions or cross-petition for certiorari itself provides a further reason why this Court should grant certiorari.

The Alaska Miners Association agrees with the Solicitor General and the State

of Alaska that respondent private parties have no more than generalized grievances about the conduct of government and, therefore, would have no Article III standing to bring this case in federal court. S. G. 14-15, and State of Alaska Supplemental Brief 17. The Alaska Supreme Court, however, found that the respondents' status as citizens[1] gives respondents a sufficient derivative interest or stake in the performance of state governmental functions that they have standing in state court.

The Solicitor General asserts that, although state courts are not barred by the federal constitution from employing such a theory of standing, this Court has consistently held that, when standing is

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[1]In his argument the Solicitor General erroneously assumes that respondents are state taxpayers. Alaskans do not pay personal income taxes to the State.

based on nothing more than an interest in the conduct of government, an individual does not meet the standing requirements of Article III. S. G. at 14. The Solicitor General thus concludes that the Court should deny the petition for certiorari.

In so arguing, the Solicitor General elides the issue that makes this case worthy of certiorari. This Court has not yet decided whether, when a state court invalidates a state law based upon the application of a federal law, the state court plaintiff's lack of Article III "injury-in-fact" will bar the nonprevailing party (typically, the state government) from seeking review in the United States Supreme Court.[2] If the

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[2]See, Laurence H. Tribe, American Constitutional Law, 113-114 and n. 20 (2d Ed. 1988); P. Bator, et al., Hart and Wechsler's, The Federal Courts and the Federal System, 161, 181 (2d Ed. 1973), and Barnes v. Kline, 759 F.2d 21, 63 n. 16 (D.C. Cir. 1985) (Bork, J. dissenting), (continued)

Court fails to resolve this issue, it consigns a spectrum of important cases to a limbo in which reviewability by this Court will remain uncertain. Thus, the question of whether this Court has jurisdiction to hear this case does not provide a ground for denial of the petition for certiorari, but instead reinforces the petitions by providing an additional and independent reason for granting review.

II

Whether Section 6(i) precludes a private action filed in state court to determine the validity of the state's mining laws is an issue worthy of review by this Court.

Although the Solicitor General agrees that a private cause of action would not be properly implied in federal court to enforce Section 6(i), S. G. 17-18, he nonetheless concludes that a state court

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judgment vacated sub nom., Burk v. Barnes, 479 U.S. 361 (1987).

is free to imply such a cause of action. These petitions for certiorari raise precisely that issue: whether a state court can imply a private cause of action under federal law when a federal court would not similarly imply a private right of action. It is an issue of first impression for this Court, and for that reason, the petition for certiorari should be granted.

The Solicitor General, however, asserts that this case should be construed as a state cause of action for relief by citizens of Alaska "injured" by the State's violation of federal law. S. G. 18. The Solicitor General suggests that it is not unusual for a state court to construe federal law when it is an element of a state-created cause of action. In this case, however, the Alaska Supreme Court stated in unequivocal terms

that it was ruling directly upon federal law:

> Appellants' state constitutional and public trust theories depend on the meaning of the grant and restrictions of Section 6(i). Since Section 6(i) directly controls, we have no occasion to examine these theories further.

86-206 Petitioner's Appendix B85 ("Pet. App."). Unlike the cases cited by the Solicitor General, S. G. 19-20, this case involves no state cause of action independent of that federal statute. Rather, the Alaska Supreme Court has given private parties a "direct" statutory enforcement action in state court. Thus, this Court is squarely faced with the issue of whether a state court can imply a private cause of action under federal law when a federal court would not similarly imply a private right of action.

Under the theory that the claims asserted in this case are state claims, the Solicitor General raises three

principal reasons why the Alaska Supreme Court's holding that a private right of action exists under Section 6(i) is correct on the merits.[3] The three reasons are preemption, res judicata and lack of federal resources to monitor Section 6(i). As discussed above, the Alaska Miners Association asserts that the Solicitor General has mischaracterized the claims asserted by the plaintiffs as causes of action under state law only. Nonetheless, for purposes of rebuttal the Alaska Miners Association discusses briefly each of the three arguments on the merits. The Solicitor General asserts

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[3]The three reasons raised by the Solicitor General do not address the "certworthiness" of this case, but rather are directed at the merits. The Solicitor General's repeated discussion of the merits, rather than the certworthiness of the case, is further support that the issues raised by this case are of sufficient importance to warrant review by this Court.

that preemption is the "relevant issue." S. G. 20. His preemption analysis is erroneous. The Solicitor General's concession that no implied private right of action under Section 6(i) exists in federal court should be dispositive: federal legislation which excludes private enforcement in federal court surely must preempt any private enforcement in state court.[4] As the Solicitor of the United States Department of the Interior points out, "[i]n essence, the government's current exercise of prosecutorial discussion will have been preempted by the Alaska Supreme Court without any

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[4]In Davis v. Passman, 442 U.S. 228, 239 (1979), this Court stated, "[i]t is entirely appropriate for Congress in creating . . . rights and obligations, to determine . . . who may enforce them and in what manner." Id. at 241. Section 6(i) makes a "textually demonstrable commitment," Id. at 242, of enforcement authority and that commitment is solely to the United States Attorney General in federal court.

participation of the United States." State of Alaska, Supplemental Brief Appendix 13 ("App."). The language of Section 6(i) makes it clear that Congress intended to "occupy the field" with regard to enforcement of Section 6(i). A private enforcement action in state court interferes with that scheme. See, International Paper Company v. Ouellette, ____ U.S. ____, 107 S. Ct. 805, 811-814 (1987).

The Solicitor General also takes the view that a state court decision would have no res judicata effect upon federal courts considering a forfeiture action brought by the Attorney General. S. G. 16-17. That view will engender serious confusion in the interpretation of the federal statute and the stewardship of federal land interests retained by the United States under that statute. The Alaska Superior Court and the Solicitor of

the Department of the Interior have already concluded that the state laws comply with the Section 6(i) leasing condition (Pet. App. A9-A12; App. 5-10), while the Alaska Supreme Court and the Solicitor General have concluded otherwise. Pet. App. B51-B71; S. G. 24-84. The Solicitor General's views can hardly be taken as an authoritative pronouncement of the federal government, especially in light of his recognition that the Alaska Supreme Court's decision is "purely advisory." Such confusion leaves federal agencies and the Alaska state executive and legislative branches in an untenable position.

Finally, the Solicitor General asserts that,

> [t]he Attorney General does not have the resources to monitor the administration and deposition of millions of acres of land that were granted the State. Suits by private parties and beneficiaries of the trust can furnish the

> important means for ensuring that the limitations imposed by Congress are respected.

S. G. 23. The Alaska Miners Association concurs with the State of Alaska that these assertions should be rejected for a variety of reasons. First, the decision to imply a private cause of action is always based on a claim that it would benefit overall enforcement. That has not prevented this Court from ruling in many cases that Congressional enactments do not permit private enforcement. Second, the absence of a forfeiture suit is not due to any lack of federal resources, but rather to the judgment by the Interior Department that there was in fact no violation of the leasing condition. See, Solicitor Tarr's Opinion, App. 5-10. Third, Section 6(i) contains no trust language that in any way restricts the State's use of mineral revenues from lands received under the

Section 6 land grants. See, State of Alaska Supplemental Brief 13-14.

III and IV

Although the Solicitor General's interpretation of Section 6(i) is wrong on the merits, his raising of the arguments underscores the importance of this case and its need for review.

The Solicitor General makes several additional arguments directed at the merits of the Alaska Supreme Court's interpretation of Section 6(i). S. G. 24-30. These arguments need not be addressed in determining whether to grant the petitions for certiorari, but they do suggest the importance of the issues and the need for a conclusive determination of the issue by this Court. The Alaska Miners Association does not address the merits in this supplemental brief, except to note (1) that the Solicitor General incorrectly construes the language of Section 6(i) of the Alaska Statehood Act, see State of Alaska Supplemental Brief 2,

and (2) the issues decided by the Alaska Supreme Court are sufficiently important that they provide an independent reason for review of the case. See, Alaska Miners Association petition for certiorari at 12-13.

Conclusion

The petitions for a writ of certiorari should be granted.

Respectfully submitted this 24th day of May, 1988.

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